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## Information and Privacy Commissioner/Ontario

lice, library, health and school boards; public utilities; and transit authorities. The Act also gives the public access to general records relating to the activities of government, ranging from administrative records to policy documents. The underlying objective is open government and holding elected and appointed officials accountable for their policy. Privacy protection, on the other hand, refers to the safeguarding of personal information held in data bases maintained by government organizations. The Acts establish rules about how government organizations manage records and access to records.

## **The Purposes of the Acts**

The purposes of the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* are:

- a) To provide a right of access to information under the control of government organizations in accordance with the following principles:
  - information should be available to the public;
  - exemptions to the right of access should be limited and specific;
  - decisions on the disclosure of government information may be reviewed by the Information and Privacy Commissioner.
- b) To protect personal information held by government organizations and to provide individuals with a right of access to their own personal information.



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

The Honourable Gary Carr  
Speaker of the Legislative Assembly

I have the honour to present the 1999 annual report of the Information and Privacy Commissioner/Ontario to the Legislative Assembly.

This report covers the period from January 1, 1999 to December 31, 1999.

Sincerely yours,

Ann Cavoukian, Ph.D.  
Commissioner



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## Role and Mandate

Ontario's *Freedom of Information and Protection of Privacy Act*, which came into effect on January 1, 1988, established an Information and Privacy Commissioner as an officer of the Legislature to provide an independent review of the decisions and practices of government organizations concerning access and privacy. The Commissioner is appointed by and reports to the Legislative Assembly of Ontario. The Commissioner is independent of the government of the day in order to ensure impartiality.

The *Municipal Freedom of Information and Protection of Privacy Act*, which came into effect January 1, 1991, broadened the number of public institutions covered by Ontario's access and privacy legislation.

The Information and Privacy Commissioner (IPC) plays a crucial role under the two *Acts*. Together, the *Acts* establish a system for public access to government information, with limited exemptions, and for protecting personal information held by government organizations at the provincial or municipal level.

The provincial *Act* applies to all provincial ministries and most provincial agencies, boards and commissions; colleges of applied arts and technology; and district health councils. The municipal *Act* covers local government organizations, such as municipalities; police, library, health and school boards; public utilities; and transit commissions.

Freedom of information refers to public access to general records relating to the activities of government, ranging from administration and operations to legislation and policy. The underlying objective is open government and holding elected and appointed officials accountable to the people they serve.

Privacy protection, on the other hand, refers to the safeguarding of personal information — that is, data about individuals held by government organizations. The *Acts* establish rules about how government organizations may collect, and disclose personal data. In addition, individuals have a right to see their own personal information and are entitled to have it corrected if necessary.

The mandate of the IPC is to provide an independent review of government decisions and practices concerning access and privacy. To safeguard the rights established under the *Acts*, the IPC has five key roles:

- resolving appeals when government organizations refuse to grant access to information;
- investigating privacy complaints about government-held information;
- ensuring that government organizations comply with the *Acts*;
- conducting research on access and privacy issues and providing advice on proposed government legislation and programs;
- educating the public about Ontario's access and privacy laws, and access and privacy issues.

In accordance with the legislation, the Commissioner delegated some of the decision-making powers to various staff. Thus, the Assistant Commissioner and selected staff were given the authority to assist her by issuing orders, resolving appeals and investigating privacy complaints. Under the authority of the Commissioner, government practices were reviewed, and proposed inter-ministry computer matches commented on.

# Table of Contents

<b>COMMISSIONER'S MESSAGE:</b>	
An overview	1
<b>ISSUES UPDATE:</b>	
How the government responded to the recommendations made in last year's report	3
<b>KEY ISSUES:</b>	
Smart Cards: What should be included in the legislation	5
Don't deny grieving families access	7
Contracting out doesn't eliminate obligations	9
<b>COMMISSIONER'S RECOMMENDATIONS:</b>	
The Commissioner's conclusions and recommendations	11
<b>WORKING TOGETHER</b>	
Working with government organizations to resolve issues	14
<b>REQUESTS BY THE PUBLIC:</b>	
1999 Access Requests	16
Response rate compliance	19
<b>APPEALS BY THE PUBLIC:</b>	
Appeals during 1999	24
<b>JUDICIAL REVIEWS:</b>	
Rulings during 1999	27
<b>PRIVACY INVESTIGATIONS:</b>	
1999 statistics and analysis	29
<b>INFORMATION ABOUT THE IPC:</b>	
Outreach program	32
Publications	34
IPC Web site	36
Organizational Chart	37
Financial statement	38
Appendix 1	38

# Commissioner's Message

In last year's Annual Report, I tried to focus our attention on the most topical access and privacy challenges of 1998. The response to the report was overwhelmingly positive. In fact, we had to order a second press run to meet the requests for copies. The report also generated considerable public debate in the media and discussions throughout government. I have built on this approach in my 1999 Annual Report.

Last year, I called on the Ontario government to take specific action in a number of key areas. The government's response to my recommendations is discussed in this year's report. I have also identified three new challenges in important areas that have come to the forefront during the past year. These *Key Issues*, discussed in considerable detail, are: (1) *Smart Cards* — privacy concerns and steps to address them as the government brings increased focus to this area of technology; (2) *Family Access to Information* — a proposed solution to the emotional issue of access by close family members to information about a deceased loved one; and (3) *Outsourcing* — new directions from the courts regarding access and privacy responsibilities when using the private sector to deliver government programs and services.

## Quality Service

All governments are concerned with providing Quality Service, and rightfully so. Over the past several years, the Ontario government has made this a corporate priority by streamlining its operations, focusing on its core business activities, and introducing effective accountability and performance measurement systems. Ministries must adhere to rigorous standards for responding to telephone calls, letters, walk-in service, and complaint resolution. However, the government has thus far resisted my recommendation that Ministries be required to demonstrate comparable commitments to the response standards required by our freedom of information and protection of privacy laws. Surely there can be no debate that these statutory responsibilities are at least equal in importance to the laudable policies made under the Quality Service framework.

Last year, I made a strong commitment to report more fully on the response standard for access requests. This year's report includes the response rates for every Ontario Ministry, as well as selected municipalities, police forces and hydro commissions. I have included recommendations in the *Commissioner's Recommendations* section that may help to reinforce the government's stated commitment to improvements in this area.

## Public Education and Outreach

Public education is one of the most important mandates of the Commissioner's office. During 1999, we launched a new program, *Reaching Out to Ontario*, in an effort to bring the message of open government and privacy protection directly to the citizens of the province. A team from my office visited the London area in the fall of 1999 and plans were put in place for visits to Kingston/Belleville and Thunder Bay in 2000. We spend one to two days with community groups, business organizations, open call-in radio shows, and editorial boards of local newspapers discussing the importance of access and privacy laws and their relevance to everyday life. We also made significant progress on our school programs over the course of the past year. Our *What Students Need to Know About Freedom of Information and Protection of Privacy* program is now firmly entrenched in the Grade 5 Social Studies curriculum throughout the province. We provide teachers with a stand-alone package to help them deliver the program, as well as attending as many Grade 5 classes as we can through our companion *Ask an Expert* speaker's program. We will be launching similar programs for the new Grade 10 Civics curriculum in the fall of 2000.

## Working Together

My office is committed to developing closer relations with government organizations. By developing a better understanding of the business of our institutional clients, we can deal more effectively with appeals and complaints. We also believe that the better we get to know each other, the more likely we are to find areas for collaboration in advancing the purposes of the Acts. This year's report includes a section called *Working Together*, which focuses on the positive achievements flowing from our work over the past year with the Ministries of the Attorney General, Solicitor General, Correctional Services, and Labour.

## Motor Vehicle Databases

Late in 1999, newspaper reports focused public attention on the accessibility of information from the drivers' licence and vehicle registration databases. The Ministry of Transportation (MTO) has been administering these two public databases since well before the *Freedom of Information and Protection of Privacy Act* came into force on January 1, 1988. Information from these databases is made available to the public on an individual-record basis, and in bulk to certain organizations and private firms for the purposes of transportation systems management, law enforcement, motor vehicle safety, and civil litigation. Bulk access is only permitted through formal agreements with MTO, which include specific restrictions on how the information may be used. Although the law permits access to public databases such as these, it is vital that privacy interests are accommodated as much as possible. Through the efforts of our office, individuals' home addresses, arguably one of the more sensitive data fields from a privacy perspective, are removed by MTO before responding to individual-record requests. We are now working closely with MTO to ensure that strict criteria govern permission to receive bulk access, and to strengthen existing protections for personal information.

## Privacy in the Private Sector

I have argued strongly that protecting privacy is good for business. This is one reason why I support the federal government's private sector privacy legislation, the *Personal Information Protection and Electronic Documents Act*. Last year, I called upon the Government of Ontario to introduce provincial private sector privacy legislation, thereby creating a made-in-Ontario model for privacy protection that spans both the public and the private sectors. I'm hopeful that the government will meet this challenge in the upcoming year with legislation that addresses the needs of each sector of the economy, including the complex and important health sector. As technology continues to leap forward, privacy is increasingly at risk. While the two need not be incompatible, the relationships are complex, and comprehensive privacy legislation is necessary to preserve an individual's freedom of choice and to ensure that much-needed privacy protections are provided to all Ontarians.

## Personal Thanks

Developments in the area of access to information, and particularly privacy protection, continue to bombard us with frightening intensity. At times it's a challenge to keep apace, but we do our best. The "we" of it must never be underestimated. The staff of my office bring a level of dedication and enthusiasm to their work that continues to both amaze and delight me. Our collective commitment to the underlying values of open government and privacy protection allows us to assess priorities, target resources to the areas of greatest public concern, and, hopefully, to discharge our responsibilities for advancing the public interest in these two extremely important areas. To all of the wonderful staff in this office, my sincere and heartfelt thanks — I literally couldn't do it without you.

# Issues Update

In this section, a new addition to the IPC's Annual Report, I will recap several of the major issues cited in my previous report and offer comments on what the government has done since then to address these issues.

## Compliance Rates

Last year's report highlighted the importance of a committed government effort to meet the legislated 30-day response standard on freedom of information requests. An effective access to information regime is essential for ensuring informed participation in the democratic process and an open and accountable government. Responding in a timely manner, as required by freedom of information legislation, is critical to achieving these objectives.

While there were significant improvements at a number of ministries in 1999, the overall record of Ontario ministries in meeting the legislated standard remains very poor. Only 50% of the requests received by provincial organizations were responded to within 30 days in 1999.

The government has been looking at ways to improve this performance, including the development of guidelines that will set out best practices for responding to access requests, but we believe it should be doing much more. I made three specific recommendations in my last report on steps that could be taken. I am adding three more recommendations this year. If the government is seriously committed to meeting the legislated standards, it will take firm action on these requests.

## Fee Structure

Last year, I reported on the user fees for access requests and appeals introduced by the Ontario government in 1996. The serious impact of the fee provisions on the public's use of the Acts was explained in detail, yet no action has been taken by the government to address these problems with the fee structure.

To help focus more attention on this subject, I am including three charts in this year's report. The first shows the average charges levied by provincial institutions for personal information and general record requests over the past four years. As the chart indicates, the average charge to the public for providing access to personal information has more than doubled over that period, to \$12.72 from \$5.35; while the average cost of a request for general records has increased to \$46.66 from \$27.48. These are very disturbing figures.

The second chart shows the comparable figures for access requests under the municipal Act. Charges for personal information requests have increased to \$6.99 from \$2.74. While this is a significant increase, the average cost remains well below the average under the provincial Act. Charges for access to general records at the municipal level have increased more modestly, to \$19.18 from \$14.63, again, well below the provincial counterpart.

The third chart shows how some of Ontario's fees for handling FOI requests compare with those of other large provinces. There are some very significant differences. For example, Ontario is the only jurisdiction that charges a request fee for access to one's personal information, and appeal fees for either personal information or general records appeals. Ontario also is the only jurisdiction that provides no free search time to requesters, and one of only two provinces (Alberta being the other) that gives no discretion to institutions to waive the application fee if deemed appropriate.

High fee charges should never serve as a disincentive to the right of access to information held by the government. In the *Commissioner's Recommendations* section, I am including a recommendation for a major review of the government's FOI fee structure.

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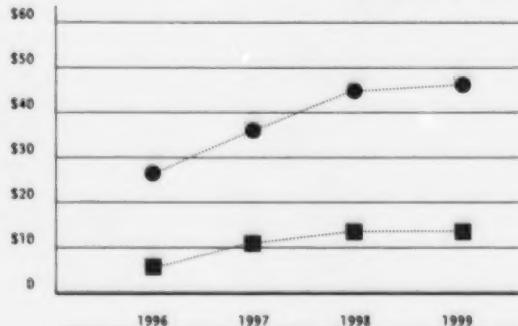
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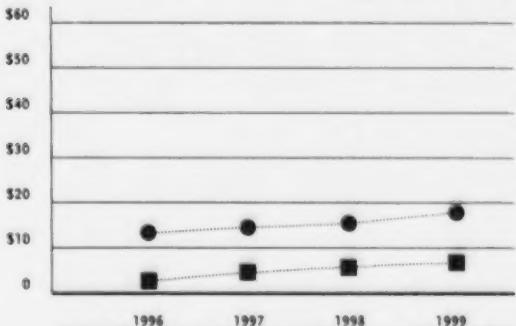
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**AVERAGE COST OF PROVINCIAL REQUESTS**

● General Records  
■ Personal Information


**AVERAGE COST OF MUNICIPAL REQUESTS**

● General Records  
■ Personal Information



General Records  
Personal Information

General Records  
Personal Information

**A COMPARISON OF FEES CHARGED FOR F.O.I. REQUESTS  
AS OF DEC. 31, 1999**

	FEDERAL F.O.I.	BRITISH COLUMBIA	ALBERTA	QUEBEC	ONTARIO
Fee: Mandatory or Discretionary	Discretion	Discretion	Mandatory	Discretion	Mandatory
Fee Waiver	Yes	Yes	Yes	Yes <sup>1</sup>	Yes
Request Fee	Yes, \$5	No	Yes <sup>2</sup>	No	Yes, \$5
Appeal Fee	No	No	No	No	Yes \$10-Personal \$25-General
Fee for access to Personal Information	No	No	No	No	Yes
Access Fees – general records					
Free search time	first 5 hrs.	first 3 hrs.	Yes	Yes	No
Search, Retrieval, Copying time Fee	Yes	Yes	Yes	No	Yes
Reading, Severing Preparation time Fee	No <sup>3</sup>	Yes <sup>4</sup>	Yes <sup>5</sup>	No	Yes
Photocopying	Yes	Yes	Yes	Yes	Yes

1 Quebec – Public bodies can waive fees

2 Alberta – \$25.00 – general request  
– \$50.00 – continuing request

3 Federal – fee for preparation after 5 hours

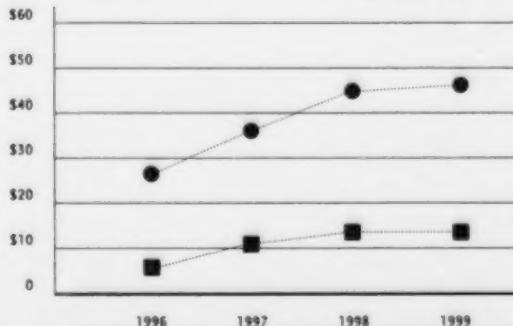
4 British Columbia – no fee for severing

5 Alberta – no fee for reviewing

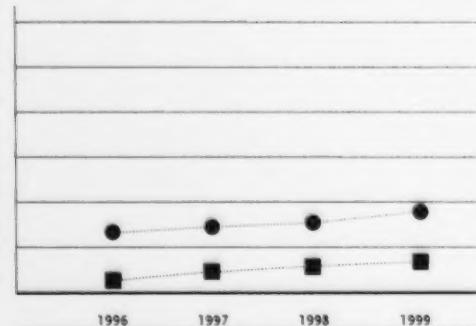


**AVERAGE COST OF PROVINCIAL REQUESTS**

● General Records  
■ Personal Information


**AVERAGE COST OF MUNICIPAL REQUESTS**

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General Records  
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Fee: Mandatory or Discretionary	Discretion	Discretion	Mandatory	Discretion	Mandatory
Fee Waiver	Yes	Yes	Yes	Yes <sup>1</sup>	Yes
Request Fee	Yes, \$5	No	Yes <sup>2</sup>	No	Yes, \$5
Appeal Fee	No	No	No	No	Yes \$10-Personal \$25-General
Fee for access to Personal Information	No	No	No	No	Yes
Access Fees – general records					
Free search time	first 5 hrs.	first 3 hrs.	Yes	Yes	No
Search, Retrieval, Copying time Fee	Yes	Yes	Yes	No	Yes
Reading, Severing Preparation time Fee	No <sup>3</sup>	Yes <sup>4</sup>	Yes <sup>5</sup>	No	Yes
Photocopying	Yes	Yes	Yes	Yes	Yes

1 Quebec – Public bodies can waive fees

2 Alberta – \$25.00 – general request  
– \$50.00 – continuing request

3 Federal – fee for preparation after 5 hours

4 British Columbia – no fee for severing

5 Alberta – no fee for reviewing

### Smart Cards

An issue that the IPC has been monitoring for more than a decade became front page news when the government announced in the October 1999 Speech from the Throne that it would be bringing in an Ontario smart card. The Throne Speech reference was brief but very significant:

**"New technology can improve efficiency and prevent fraud. The Premier has appointed the Chair of the Management Board of Cabinet to spearhead the introduction of new "smart card" technology, and given him consolidated responsibility for all efforts in this field."**

The Commissioner immediately contacted the government to inquire about its plans. She also issued a public statement outlining an expectation of consultations and offering advice and assistance to the government. The Commissioner also indicated her commitment to ensuring that smart cards are implemented in a manner that:

1. is respectful of the privacy of Ontarians;
2. limits their use to appropriate purposes;
3. ensures the security and data integrity of the information on the cards;
4. prohibits unauthorized use and intrusion.

In 1993, the IPC released a paper, simply entitled *Smart Cards*, that provided an introduction to the technology and its applications, and outlined the privacy concerns associated with smart cards. At that time, the IPC recommended that the provincial government initiate a co-ordinated strategy regarding smart cards, with the Management Board Secretariat taking the lead role, and develop government-wide technical and privacy protection standards and guidelines.

In 1997, the IPC followed up with a second paper, *Smart, Optical and Other Advanced Cards: How to Do a Privacy Assessment*, prepared in concert with the Advanced Card Technology Association of Canada. It was designed to help developers and marketers of applications using advanced card technologies to understand and implement, in a practical way, the principles of privacy protection. (Both papers are on the IPC Web site, <http://www.ipc.on.ca>.)

If not properly configured, smart cards can raise legitimate and serious privacy concerns. Chief among these are the potential for individuals to lose control over their personal information through the use of the technology, and the fact that a smart card can facilitate surveillance, both overt and covert.

The IPC is opposed to a compulsory identity card or a multi-purpose service card that functions as a *de facto* identification card. We also object to the use of a unique personal identifier across multiple government applications for the purpose of monitoring or tracking individuals.

To ensure that any government smart card application in Ontario does not compromise privacy, the IPC believes the government should undertake a comprehensive privacy impact assessment that would form the basis for public consultation and legislative debate. Specifically, the government must fully define:

- what the smart card will be used for and why;
- what data will be stored on the card;
- who will have the right to access and use the card and stored information;
- what controls will be in place to prevent unauthorized uses and disclosures, and maintain the integrity of the data on the card and in associated databases.

Approval of any scheme should be contingent upon demonstrating that privacy will be adequately protected.

The IPC is committed to ensuring that any government smart card application is respectful of the privacy of Ontarians and, in particular, that it is not, and cannot become, a compulsory identity card designed as an instrument of surveillance. Any smart card technology must be implemented in an open and transparent manner, with proper legislative controls and methods to ensure public accountability.

Toward that end, the IPC is pleased that the Chair of Management Board of Cabinet has already publicly committed himself to public consultation and to preserving privacy. The IPC is further encouraged by Management Board's initial efforts to work with the IPC to identify and effectively address the privacy issues associated with this technology.

On the day following the Throne Speech, the Honourable Chris Hodgson, Chair of Management Board, told an Ottawa radio station that there was going to be:

... a lot of consultation and a lot of discussion (on smart cards). We want to try to make sure that we deliver the efficiency and the security so there is no fraud and also the convenience for the public, but the overriding concern [has] got to be that we have our privacy rights protected as well as they are today or even better.

Public acceptance of a government smart card will only develop if people are assured that the technology will not negatively impact personal privacy.

The IPC has always maintained that smart cards have the capacity to either subvert privacy or enhance it. The choice is not driven by the nature of the technology, but rather by the issuer — in this case, the provincial government. Accordingly, we will work closely with the Government of Ontario to establish the full measure of legislative, policy and technical safeguards necessary to protect privacy, prior to the implementation of a government smart card.

**The IPC has always maintained that smart cards have the capacity to either subvert privacy or enhance it. The choice is not driven by the nature of the technology, but rather by the issuer — in this case, the provincial government.**

# Don't deny grieving families access

Of the various types of appeals processed by the IPC, those involving a request for information about a deceased family member are among the most sensitive. Requests of this type are submitted to institutions (most often to local police forces or the Ontario Provincial Police) by immediate family members, or their representatives, in order to obtain information surrounding the circumstances of the relative's death.

Except in certain limited circumstances, institutions must deny relatives access to this information because disclosure is presumed to be an unjustified invasion of the deceased's personal privacy under the provincial and municipal *Acts*.

In 1999, the IPC undertook a study on the impact of the legislation on individuals seeking access to information about deceased loved ones. We surveyed appellants for their experience and view of the legislation; contacted professionals with expertise in the field of bereavement counselling; looked at the legislative history, including the reports of the provincial and municipal three-year review committees; and reviewed freedom of information and privacy legislation across Canada. We also consulted broadly with freedom of information professionals in the police community, since they are most frequently the point of first public contact by grieving family members.

A broad consensus emerged from our discussions: the *Acts* do not serve the interests of relatives of deceased family members in these circumstances. Here are the other highlights of our findings:

- Usually the death is recent and unexpected, often involving a motor vehicle accident, suicide, or other sudden death. Individuals seeking information about the death of a family member are in a fragile emotional state.

- When submitting an access request, family members fully expect that the information will be disclosed to them because of their relationship to the deceased. They are surprised to learn that they will typically be denied access unless they fulfil the strict requirements of sections 66(a)/54(a) of the *Acts*, which require that they be the deceased's "personal representative" and that the requested information is related to the administration of the estate. They cannot accept that they are treated in the same manner as a requester who is a stranger to their loved one.
- Many requesters appeal to the IPC, hoping that an adjudicator will recognize the special circumstances of their case. On appeal, they discover that the information was properly exempted by the institution. Family members find it difficult to accept that there is no special recognition of familial relationships in the legislation.
- Professionals working in the field of bereavement counselling and appellants who are seeking information about deceased loved ones speak with one voice about the negative impact that being denied access to information about the deceased has on the grieving process. While the response of the appellants is something that both Freedom of Information and Privacy Co-ordinators and IPC staff have known anecdotally for

quite some time, this consultation process demonstrated that access to this type of information is recognized to be extremely important by those who study or practice in the area of the psychology of death, dying, and bereavement.

- While a number of other Canadian jurisdictions have access and privacy provisions in their statutes that mirror Ontario's legislation, some do recognize a greater right of access to relatives. Quebec's private sector legislation grants a broad range of individuals access to information relating to the cause of death contained in the deceased's medical file. Alberta and Manitoba's privacy provisions recognize compassionate circumstances and permit greater disclosure than the Ontario *Acts*.
- A review of the legislative history confirmed that there was no discussion of this issue, either in the context of section 66 or otherwise, when the provincial *Act* was passed into law, or in 1991 during the three-year review. The issue was raised and discussed by the Standing Committee of the Legislative Assembly during the three-year review of the municipal *Act* in 1994, but no specific amendment was proposed.

A statutory amendment to address this sensitive and compelling issue is clearly required, and would be supported by a broad cross section of stakeholders: requesters and appellants; Freedom of Information and Privacy Co-ordinators in both the provincial and municipal sectors, including the police community; professionals in the field of grief counselling; and the IPC.

Specific language for a new subsection for section 21 (section 14 of the municipal *Act*) is included in the *Commissioner's Recommendations* section, which follows this review of key issues.

**Access to this type of information is recognized to be extremely important by those who study or practice in the area of the psychology of death, dying, and bereavement.**

# Contracting out doesn't eliminate obligations

A decision of the Court of Appeal for Ontario released in November 1999 has significant implications for access and privacy rights when the delivery of government services is taken over by private sector agencies. The government's Alternative Service Delivery (ASD) program allows ministries to enter into contractual arrangements with non-government agencies to perform services traditionally delivered by government staff or resources. The Court's decision establishes that "contracting out" government services does not relieve the government of its access and privacy obligations for records held by private service providers.

The government's duties to make information accessible to the public and to protect personal privacy extend only to records "in the custody" or "under the control" of a government institution. When a private contractor is engaged to perform a government service, this usually involves the transfer of some or all of the records-management functions associated with that service. In some cases, the management of government information may be the only service transferred to the private sector, usually to an information technology company. The question ASD raises is whether records transferred to, or created or collected by, the private sector contractor remain under the control of government. If not, public rights of access and individual rights of privacy under the legislation may be lost.

The Court of Appeal judgment in *Ontario Criminal Code Review Board v. Donald Hale, Inquiry Officer et al.*<sup>1</sup> is the first definitive Ontario case to identify factors establishing continued government control over records in the hands of a private sector contractor. At issue in this case were records generated under provisions of the *Criminal Code* which require provincial Review Boards to review custody decisions for persons found unfit to stand trial or not criminally responsible by reason of mental disorder.

The *Code* also requires Review Boards to keep records of their hearings, which can be used to create transcripts if required for appeal purposes. The Ontario Board previously employed court reporters to perform this function, but began using freelance court reporters to create and retain physical custody of these records, which included stenographic and/or audio tapes.

A requester sought access to a freelance court reporter's audio tapes of his Review Board hearings. The Board denied access on the basis that the audio tapes belonged to the reporter and were not under its control. On appeal to the IPC, the Board and the reporter both agreed that the stenographic tapes of the hearings were under the Board's control because these were its "official record," but claimed that audio tapes of the same hearings were not, because these were only created to "back-up" the official record. The IPC disagreed and found that the audio tapes, like the stenographic tapes, were under the Board's control. The IPC ordered the Board to secure copies of the tapes from the reporter and to make a decision on the requesters' rights of access to them.

The freelance reporter was unsuccessful in seeking to overturn the IPC's decision on judicial review. On a further appeal, the Court of Appeal upheld the IPC's finding.

The Court adopted a broad, liberal and purposive approach to interpreting the legislation, including the threshold tests of custody or control. The specific factors which the Court said established control were:

1. The Board was required to keep a record of its proceedings under the provisions of the *Criminal Code*.
2. The audio tapes were part of the Board's record of proceedings because they assisted the court reporter in making an accurate record on the Board's behalf.
3. The sole purpose for creating the audio tapes was to fulfil the Board's statutory mandate to keep an accurate record.
4. The Board must have access to the tapes to ensure the accuracy of the record and any transcript prepared.
5. The Board has a broad discretion to control access to information generated at its hearings, including information contained on the audio tapes.
6. The Board has a duty to ensure, by contract if necessary, that it had access to the tapes and that these would be used solely for the Board's purposes, otherwise it would be in breach of its statutory duty.

The Court clarified that a "control" finding was not dependent on a statutory requirement that a particular type of record be created. The Court said that the Board would still be found to have control over the audio tapes even if they were not part of the Board's record of proceedings. The Court also agreed with a British Columbia case which said that notes created to

assist a school board employee in performing her job function were in the school board's control, even though there was no statutory requirement that such records be kept.<sup>1</sup> The only limitation on government control which the Court recognized was the need to maintain arm's length independence between the private service provider and the government.<sup>2</sup>

In short, where a private contractor plays an integral part in fulfilling some aspect of the government's mandate, the courts are prepared to find control over records which government would otherwise generate or collect on its own behalf if it continued to perform the service itself. If this control exists, government has a duty under its Alternate Service Delivery scheme to enter into appropriate contractual arrangements to ensure that the access and privacy rules under the Acts are protected. Failure to do so will place government in breach of its responsibilities under the legislation.

<sup>1</sup> *Ontario Criminal Code Review Board v. Donald Hale, Inquiry Officer et al* [1999] O.J. No. 4072 (C.A.), affirming (March 7, 1997). Toronto Doc. 283/95 (Div. Ct.)

<sup>2</sup> *Neilson v. B.C. (Information and Privacy Commissioner)*, [1998] B.C.J. No. 1640

<sup>3</sup> *Walmsley v. Ontario (Attorney General of Ontario) et al.* (1997), 34 O.R. (3d) 611, 101 O.A.C. 140, [1997] O.J. No. 2485 (C.A.)

The Court's decision establishes that "contracting out" government services does not relieve the government of its access and privacy obligations for records held by private service providers.



# Commissioner's Recommendations

I have a number of specific recommendations for the government to consider as ways to improve Ontario's freedom of information and protection of privacy programs. Some flow from the *Key Issues* sections of this and last year's Annual Reports, and others are based on our ongoing experience with the administration of the Acts.

## **(1) Review Fees**

As outlined in the *Issues Update* section, under the provincial Act, the average charges levied to members of the public for access to their own personal information has more than doubled over the last four years, to \$12.72 from \$5.35, and the average cost of a request for general records has increased to \$46.66 from \$27.48. Ontario's fee structure is also significantly out of line with comparable fee provisions in other Canadian jurisdictions.

The right of access to government information, and particularly one's personal information, must not be unduly inhibited by fee charges that go beyond the "user pay" principle.

I recommend the government amend its FOI fee structure to bring it in line with that of other large provinces, including eliminating fees for personal information requests; eliminating appeal fees; and restoring the two hours of free search time eliminated by the government in 1996.

## **(2) Improvements in Compliance**

In last year's report, I pointed out that, based on a three-year assessment period, less than 50% of the requests made to provincial ministries and agencies were answered within the 30-day time period required by the Act. During 1999, some institutions improved their compliance rates significantly, but far too many others still failed to meet their statutory obligations with sufficient regularity to meet acceptable standards.

Last year, I recommended three steps that could be taken by the government to improve compliance rates. I believe these warrant repeating: (1) add response standard commitments directly to the government's Quality Service framework, and link these commitments to Deputy Minister performance contracts; (2) classify Co-ordinators appropriately, and delegate decision-making authority to them in recognition of their expertise; and (3) ensure adequate resourcing for FOI program management. This year I'd like to add three more recommendations:

4. Include the effective administration of freedom of information and protection of privacy as a core business of Management Board Secretariat, and link performance measures to the Ontario Public Service business planning process;
5. Have the Chair of Management Board of Cabinet, as the minister responsible for the Acts, personally write to all heads of ministries and senior government officials who did not meet the response time standards two-thirds of the time, asking for an accounting of the steps that will be taken in the upcoming year to ensure substantial improvements.
6. Amend section 57(4)/45(4) of the Acts to require institutions to waive the payment of any fees if requests have not been properly answered within the statutory time frames.

### **(3) Smart Cards**

To ensure that any government smart card application in Ontario does not compromise privacy, I recommend that the government undertake a privacy impact assessment that can form the basis for public consultation and legislative debate. The government must clarify and communicate the uses of the proposed smart card to the public. The IPC is willing to assist in developing the necessary controls required to protect privacy.

### **(4) Grieving Families**

A statutory amendment to address the sensitive and compelling issue of family members being denied access to information about a deceased family member is clearly required. The reasons behind this recommendation are discussed in detail in the *Key Issues* section.

I propose the following legislative amendments (the section references are to the provincial Act, and should be mirrored in the equivalent provisions of the municipal Act):

#### **A NEW SUBSECTION FOR SECTION 21 (SECTION 14 OF THE MUNICIPAL ACT):**

##### **21(3.1)**

(a) Despite subsection (3), a disclosure to a relative of a deceased individual of personal information about the circumstances or manner of the individual's death is not presumed to constitute an unjustified invasion of personal privacy.

(b) For the purposes of clause (3.1)(a), "relative" means the deceased individual's spouse, same-sex partner, child, parent, brother, or sister.

(c) In this subsection, "spouse" and "same-sex partner" have the same meaning as in Part III of the *Family Law Act*; and "child" and "parent" have the same meaning as in section 1(1) of the *Family Law Act*.

#### **A NEW SUBSECTION FOR SECTION 42 (SECTION 32 OF THE MUNICIPAL ACT):**

An institution shall not disclose personal information in its custody or under its control except,

(i.1) to a relative, as defined in subsection 21(3.1), of the deceased individual if the disclosure would not constitute an unjustified invasion of personal privacy.

#### **A NEW SECTION TO FOLLOW SECTION 66 (SECTION 54 OF THE MUNICIPAL ACT):**

66.1 In addition to the authority conferred by section 66(a), any right or power conferred by this *Act* may be exercised, where an individual died before reaching the age of 16 years, by a person who had lawful custody of that individual at the time of his or her death.

### **(5) Privatization and Alternate Service Delivery**

As outlined in the *Key Issues* section, the courts have now made it clear that whenever an institution enters into an arrangement to provide government services through a private sector contractor, the access and privacy rights of Ontarians must be preserved. I recommend that the government adopt the following framework to be used for such arrangements:

1. There must be a written contract between the government institution and the private service provider which explicitly provides that the provisions of the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act* continue to apply to records integral to the performance of the government service.

2. The contract must specify the types or classes of records involved in the government service, acknowledge that these records remain under the institution's control, and oblige the private sector contractor to keep the records secure and return them to the institution on demand for the purposes of an access request or in the event that a privacy issue arises. The records must also be returned to the institution at the conclusion of the contract to ensure that continuing rights of access and privacy are not frustrated.

**Information cannot be given, exchanged or sold to other parties without the informed consent of the individual concerned.**

3. Where the records include personal information, the privacy rules under the Acts governing the collection, retention, use, disclosure, and security of personal information should be clearly stated to apply. In particular, it must specify that personal information cannot be used by the private contractor for its own purposes, unconnected with the government service, that the information cannot be given, exchanged or sold to other parties without the informed consent of the individual or individuals concerned, and that the private contractor recognizes and agrees to provide individuals with the right of access to their own personal information unless an exemption from that right applies.

# Working Together

In the 1998 Annual Report, we highlighted a number of new initiatives within the IPC's Tribunal Services Department. One of these was the establishment of an Institutional Relations Program for our provincial and municipal clients.

The purpose of this program is to work collaboratively with institutions to further the goals of access to information and protection of privacy through:

- better understanding the business of our institutional clients in order to deal more effectively with appeals and complaints; and
- providing IPC Mediators and institutional staff with an opportunity to better understand each others roles and needs, and to develop more productive relationships.

In the provincial sector, we focused our work in 1999 on two institutions: the Ministry of Labour and the Ministry of the Attorney General.

## Ministry of Labour

With input from Management Board Secretariat, the Ministry of Labour and the IPC developed a *Backgrounder for Senior Managers on the Role of the Freedom of Information and Privacy Co-ordinators Relating to Access to Information*. The *Backgrounder* explores the pivotal role the Co-ordinator plays in any successful access scheme, while at the same time identifies the need for senior management commitment to the principles and statutory obligations of the Acts. Both the *Backgrounder* and a related series of *IPC Practices* on processing requests and appeals are available on our Web site.

## Ministry of the Attorney General

We also began a major series of initiatives involving the Ministry of the Attorney General, an institution with a high volume of both requests and appeals. We are pleased to be a part of this wide-ranging and long-term joint project which includes important systemic and practical initiatives:

### RESPONSE TIME IMPROVEMENTS

The Ministry has committed to improving the rate of compliance with statutory standards for responding to access requests. With the addition of new resources, and a renewed focus on compliance as a corporate priority, the Ministry was able to improve its 30-day compliance rate to 76% from 70% during 1999, despite a 47% increase in the number of requests.

### DELEGATED DECISION-MAKING

The Ministry reviewed its decision-making structure and amended its delegation of authority down to the level of Director and, in some cases, to the Co-ordinator. By the Ministry's own analysis, this streamlining of the decision-making process has had several benefits: reduced the time spent by senior officials on matters that can be effectively handled at the Director or Co-ordinator level; reduced the number of layers in the review and approval process; and improved the response time standards.

### JOINT EDUCATIONAL SESSIONS

The IPC and the Ministry have designed an ongoing program of joint educational sessions, involving the provincial mediation team and the FOI office of the justice sector (Attorney General, Solicitor General, and Correctional Services). Sessions are held two or three times a year. The two groups have received presenta-

tions from both the Coroner's Office and the Crown Law Office (Criminal) on the nature of their businesses, the types of records they deal with, and the challenges they face in administering FOI responsibilities. Staff from the Policy and Compliance branch of the IPC also attended one session and provided a briefing on smart card technology.

**The Ministry's *Integrated Justice Project* aims to re-engineer the justice system, increase efficiency, reduce paper work, speed processes, improve information quality, and reduce costs.**

#### **CLARIFYING REQUESTS**

Both of our organizations are committed to identifying practical process improvements. The first of these was targeted at encouraging program staff to clarify requests directly with requesters in certain circumstances. Ministry and IPC staff collaborated on revised policies which have been incorporated into the Ministry's internal FOI guidelines and the IPC's *Practice* entitled *Clarifying Requests*.

#### **INTEGRATED JUSTICE PROJECT**

The Ministry's *Integrated Justice Project* aims to re-engineer the justice system, increase efficiency, reduce paper work, speed processes, improve information quality, and reduce costs. The Ministry invited IPC staff to assist in a number of initiatives focused on ensuring that access and privacy considerations are properly addressed. These include: (1) conducting a comprehensive privacy impact assessment; (2) reviewing the impact of the new model on court records; and (3) membership on the *Integrated Justice Working Group on Access to Information and Privacy Issues*.

#### **SERVICE QUALITY AND PERFORMANCE CONTRACTS**

##### **FOR SENIOR MANAGERS**

The Ministry of the Attorney General supports, in principle, linking FOI compliance with the Ministry's overall Service Quality plans and the performance contracts of senior managers. Because both of these initiatives are corporately sponsored, the Ministry will be exploring these two approaches with Management Board Secretariat.

#### **ROLE OF LEGAL COUNSEL**

Ministry lawyers play a unique role in Ontario's access scheme, both as counsel to Ministry clients during the access request and appeals process, and in representing the government on judicial review applications. The IPC and the Ministry's Legal Services Division are in the process of discussing how they could work together in a principled and efficient way to develop policies and principles relating to FOI.

#### **ROUTINE DISCLOSURE/ACTIVE DISSEMINATION**

The Ministry has agreed to investigate various ways for its divisions to identify records that lend themselves to routine disclosure or active dissemination, thereby avoiding the need for formal access requests under the *Act*. Similar discussions are under way with the Ontario Native Affairs Secretariat and the Assessment Review Board. The Ministry will also be reviewing the potential for using its Web site as a vehicle for RD/AD.

#### **IPC INTERPRETATION BULLETINS AND IPC ADVANCE RULINGS ON PRIVACY MATTERS**

At the Ministry's suggestion, the IPC has agreed to explore the feasibility of issuing bulletins and advance interpretations to assist institutions in administering the *Act*.

## Requests by the Public

Across Ontario, 20,902 requests for information were made to provincial and municipal government organizations in 1999 under the Acts, an increase of 951, or 4.77%, from 1998.

Provincial government organizations received 9,878 requests (2,401 for personal information and 7,477 for general records), compared to 9,353 the previous year. Municipal government organizations received 11,024 requests (4,452 for personal information and 6,572 for general records) compared to 10,598 in 1998.

Provincial and municipal government organizations are required under the Acts to submit a yearly report to the IPC on the number of requests they received, how quickly they responded to the requests, what the results were, and other pertinent information. This information helps the IPC determine the commitment to compliance with the Acts.

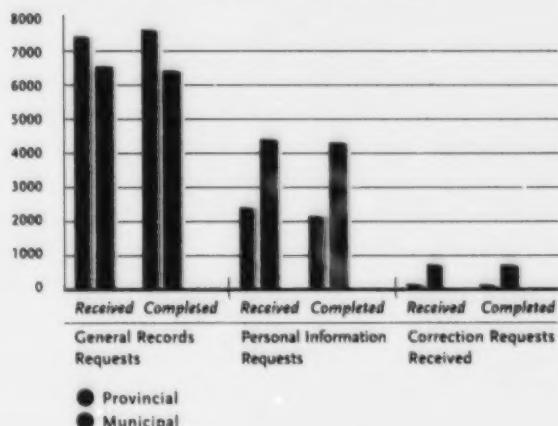
The Ministry of Environment again reported the highest number of requests received under the provincial Act with 3,611. The second highest total was the 1,555 received by the Ministry of Solicitor General and Ministry of Correctional Services (a joint report was filed since the ministries separated during the middle of the year). The Ministry of Labour, with 1,153 requests, and the Ministry of Health and Long-Term Care, which received 1,123, were next. Together, these Ministries accounted for just over 75% of all provincial requests.

For the fifth consecutive year, police services boards received the most requests under the municipal Act - 47% of all requests filed under this Act. Municipal corporations (including municipal governments) were next with 34%, followed by hydro electric commissions with 15% and school boards with two per cent.

Fifty per cent of the requests completed under the provincial Act were responded to within the statutory 30 days, up from 42% in 1998. (The 30-day compliance percentage for provincial organizations where a Minister is the head was 48% in 1999.) Overall, 80% of provincial requests were answered within 60 days, a

six per cent increase from 1998. Meanwhile, just over four per cent took more than 120 days, a significant improvement from the nine per cent figure for 1998.

REQUESTS RECEIVED AND COMPLETED - 1999



Municipal government organizations, which have consistently outperformed their provincial counterparts in meeting the 30-day response standard, responded to 85% of requests within 30 days in 1999, a one per cent increase. Overall, 97% of municipal requests in 1999 were answered within 60 days, with less than one per cent taking more than 120 days to complete.

In 33% of provincial cases, all information sought was disclosed, while information was partly disclosed in another 20%. On the municipal side, 47% of requests resulted in full disclosure, while information was partly disclosed in another 33%. Overall, no information was released in one in four cases.

Under the exemption provisions of the Acts, government organizations can, and in some cases must, refuse to disclose requested information. In 1999, as in the past few years, the most frequent exemption used for a personal information request was the protection of personal information (sections 49 and 38, for provincial and municipal organizations, respec-

tively). For general records requests, the most frequent exemption cited was also the protection of personal privacy (sections 21 and 14 for provincial and municipal organizations, respectively).

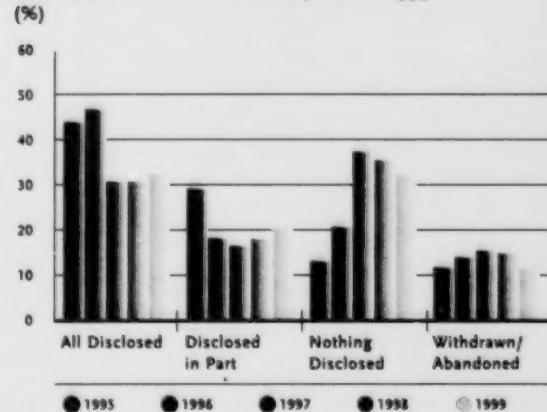
Under the Acts, individuals have the right to request correction of their personal information held by government. In 1999, provincial organizations received five requests for corrections and refused three. Municipal organizations received 707 correction requests and refused 16. When a correction is refused, the requester may attach a statement of disagreement to the record, outlining why the information is believed to be incorrect. This year, 16 statements of disagreement were filed under the municipal Act, none under the provincial Act.

In addition to application fees, the legislation permits government organizations to charge additional fees for providing access to information under certain conditions. Where the expected charge is more than \$25, a fee estimate must be provided before work begins. Government organizations have discretion to waive payment where it seems fair and equitable to do so after weighing several specific factors.

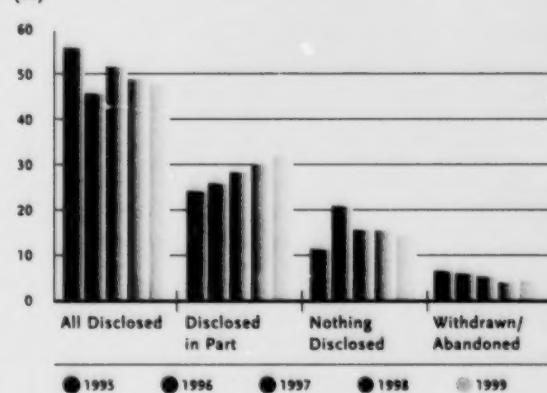
Provincial institutions reported collecting \$47,095.00 in application fees and \$291,644.51 in additional fees in 1999. Municipal institutions reported receiving \$59,728.95 in application fees and \$85,543.30 in additional fees.

Provincial organizations most often cited search time as the reason for collecting fees. Search time costs were mentioned in 46% of cases where fees were collected, followed by reproduction costs in 26% and shipping costs in 15%. Municipal organizations cited reproduction costs in 49% of cases, search time in 27%, and preparation in 14%.

OUTCOME OF PROVINCIAL REQUESTS - 1999 (%)



OUTCOME OF MUNICIPAL REQUESTS - 1999 (%)



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**PROVINCIAL EXEMPTIONS, EXCLUSIONS AND  
FRIVOLOUS OR VEXATIOUS USED  
GENERAL RECORDS – 1999**

Other – 501 (20.5 %) —————  
 Section 17 – Third Party Information 407 (16.6) —————  
 Section 14 – Law Enforcement 284 (11.6) —————  
 Section 21 – Personal Privacy 1253 (51.3) —————



**MUNICIPAL EXEMPTIONS, EXCLUSIONS AND  
FRIVOLOUS OR VEXATIOUS USED  
GENERAL RECORDS – 1999**

Other – 570 (14.9 %) —————  
 Section 12 – Solicitor-Client Privilege 228 (5.9) —————  
 Section 8 – Law Enforcement 754 (19.6) —————  
 Section 14 – Personal Privacy 2288 (59.6) —————



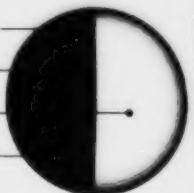
**PROVINCIAL EXEMPTIONS, EXCLUSIONS AND  
FRIVOLOUS OR VEXATIOUS USED  
PERSONAL INFORMATION – 1999**

Other – 72 (8.3 %) —————  
 Section 14 – Law Enforcement 40 (4.6) —————  
 Section 17 – Third Party Information 38 (4.4) —————  
 Section 49 – Personal Information 720 (82.7) —————



**MUNICIPAL EXEMPTIONS, EXCLUSIONS AND  
FRIVOLOUS OR VEXATIOUS USED  
PERSONAL INFORMATION – 1999**

Other – 219 (8.7 %) —————  
 Section 14 – Personal Privacy 342 (13.6) —————  
 Section 38 – Personal Information 1271 (50.6) —————  
 Section 8 – Law Enforcement 681 (27.1) —————



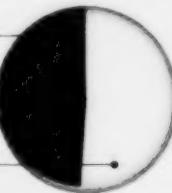
**CASES IN WHICH FEES WERE ESTIMATED – 1999**

	Provincial		Municipal	
Collected in Full	93.8%	4719	65.6%	1695
Waived in Part	2.6%	131	6.3%	164
Waived in Full	3.6%	183	28.1%	726
Total Application Fees Collected	\$47,095.00		\$59,728.00	
Total Additional Fees Collected	\$291,644.31		\$85,543.00	
Total Fees Waived	\$136,733.87		\$7,879.57	



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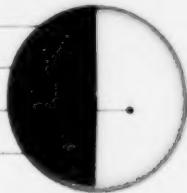
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Total Additional Fees Collected	\$291,644.51		\$85,543.30	
Total Fees Waived	\$136,723.57		\$7,879.67	

# Response Rate Compliance

To help encourage greater compliance with the response requirements of the Acts, the IPC has made a major change in the way we report on compliance with the 30-day response standard. Instead of simply citing the compliance rates for provincial and municipal institutions as groups, we have added institution-specific information. The accompanying charts include one that shows how individual provincial ministries performed in 1999 in providing prompt responses to access requests. We also cite the response rate of a number of municipal and other government organizations.

## Provincial Ministries

Overall, 50% of all provincial requests were answered within 30 days in 1999, up from 42% in 1998. Although an improvement, this means that half of the requests made to provincial ministries did not meet the legislated response standard. Of the provincial organizations with a Minister as the head, the compliance rate was 48%. All of the organizations in the latter group are listed in the provincial chart on the next page.

The results of several ministries that received large numbers of requests are particularly troublesome. The Ministry of Health and Long-Term Care met the statutory standard on only 43.2% of the 922 requests it completed in 1999. Of the 3,911 requests completed by the Ministry of the Environment in 1999, only 29.5% were answered within 30 days. And of the 108 requests completed by the Ministry of Natural Resources, only 20.4% were answered within 30 days.

Ministries provided a variety of reasons for not complying with the legislated standard on a consistent basis. These include the length of time needed to acquire internal approvals, the high number of requests that require external consultation, the large number of complex requests that consume limited staff time, and an increase in the number of requests received by certain ministries.

The IPC recognizes that these figures may not reflect requests where the statutory deadline has been legitimately extended in accordance with the legislation; for example, where notice of a request must be given to third parties, the request involves a large volume of records, an extensive search, or consultations with a person outside the institution is required. In order to provide a clearer compliance picture, the IPC has asked institutions to start collecting this information. However, legitimate extensions of the time frames cannot justify the low level of compliance by some government ministries, or the wide disparity in performance from one institution to another.

The reporting of these detailed statistics also provides an opportunity to recognize ministries that achieved a high level of success in meeting the 30-day response standard. Of the ministries which received a large volume of requests, five — Community and Social Services, Transportation, Attorney General/ONAS, Labour, and Consumer and Commercial Relations — are to be commended for answering more than 75% of their requests within the 30-day standard. Consumer and Commercial Relations is to be applauded for achieving an outstanding 91.2%.

**PROVINCIAL: NUMBER OF REQUESTS COMPLETED IN 1999**

(includes only Boards, Agencies and Commissions where the Minister is the Head)

Ministry	Requests	Requests	Within 1-30 days		Within 31-60 days		Within 61-90 days		More Than 90 days	
	Received in 1999	Completed in 1999	No. of Requests	%	No. of Requests	%	No. of Requests	%	No. of Requests	%
Agriculture, Food & Rural Affairs	18	19	18	94.7	1	5.3	0	0.0	0	0.0
Attorney General/ONAS	449	397	304	76.6	55	13.8	21	5.3	17	4.3
Cabinet Office	29	29	16	55.2	1	3.4	6	20.7	6	20.7
Citizenship, Culture & Recreation	40	38	15	39.5	9	23.7	4	10.5	10	26.3
Community & Social Services	343	337	290	86.6	33	9.8	9	2.7	5	1.5
Consumer & Commercial Relations	194	194	177	91.3	10	5.2	3	1.5	4	2.1
Ministry of Economic Development, Trade & Ministry of Tourism*	15	11	7	63.6	3	27.3	0	0.0	1	9.1
Education	16	20	3	15.0	5	25.0	2	10.0	10	50.0
Energy, Science & Technology	5	5	3	60.0	2	40.0	0	0.0	0	0.0
Environment	3611	3911	1154	29.5	1773	45.3	665	17.0	319	8.3
Finance	132	129	78	60.3	38	29.4	5	3.9	8	6.3
Health and Long-Term Care	1123	922	398	43.2	280	30.4	150	16.3	94	10.1
Intergovernmental Affairs	2	2	2	100.0	0	0.0	0	0.0	0	0.0
Labour	922	957	753	78.7	148	15.5	35	3.6	21	2.2
Management Board Secretariat	13	12	7	58.4	3	25.0	1	8.3	1	8.3
Municipal Affairs and Housing	54	52	43	82.7	5	9.6	4	7.7	0	0.0
Natural Resources	118	108	22	20.4	34	31.5	37	34.3	15	13.8
Northern Development and Mines	10	8	3	37.5	3	37.5	0	0.0	2	25.0
Office of Francophone Affairs	1	1	1	100.0	0	0.0	0	0.0	0	0.0
Ontario Women's Directorate	0	0	0	0.0	0	0.0	0	0.0	0	0.0
Ministry of Solicitor General										
Ministry of Correctional Services*	1555	1440	755	53.4	329	22.8	155	10.8	201	14.0
Training, Colleges and Universities	39	28	9	32.1	9	32.1	4	14.4	6	21.4
Transportation	255	251	204	81.3	47	18.7	0	0.0	0	0.0

\* Since these ministries did not split until the middle of the year, they did not report separately for 1999.

**PROVINCIAL: NUMBER OF REQUESTS COMPLETED IN 1999**

(includes only Boards, Agencies and Commissions where the Minister is the Head)

Ministry	Requests	Requests	Within		Within		Within		More Than	
	Received in 1999	Completed in 1999	No. of Requests	%	No. of Requests	%	No. of Requests	%	No. of Requests	%
Agriculture, Food & Rural Affairs	18	19	18	94.7	1	5.3	0	0.0	0	0.0
Attorney General/ONAS	449	397	304	76.6	55	13.8	21	5.3	17	4.3
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Ministry of Economic Development, Trade & Ministry of Tourism*	15	11	7	63.6	3	27.3	0	0.0	1	9.1
Education	16	20	3	15.0	5	25.0	2	10.0	10	50.0
Energy, Science & Technology	5	5	3	60.0	2	40.0	0	0.0	0	0.0
Environment	3611	3911	1154	29.5	1773	45.3	665	17.0	319	8.2
Finance	132	129	78	60.5	38	29.4	5	3.9	8	6.2
Health and Long-Term Care	1123	922	398	43.2	280	30.4	150	16.3	94	10.1
Intergovernmental Affairs	2	2	2	100.0	0	0.0	0	0.0	0	0.0
Labour	922	957	753	78.7	148	15.5	35	3.6	21	2.2
Management Board Secretariat	13	12	7	58.4	3	25.0	1	8.3	1	8.3
Municipal Affairs and Housing	54	52	43	82.7	5	9.6	4	7.7	0	0.0
Natural Resources	118	108	22	20.4	34	31.5	37	34.3	15	13.8
Northern Development and Mines	10	8	3	37.5	3	37.5	0	0.0	2	25.0
Office of Francophone Affairs	1	1	1	100.0	0	0.0	0	0.0	0	0.0
Ontario Women's Directorate	0	0	0	0.0	0	0.0	0	0.0	0	0.0
Ministry of Solicitor General										
Ministry of Correctional Services*	1555	1440	755	52.4	329	22.8	155	10.8	201	14.0
Training, Colleges and Universities	39	28	9	32.1	9	32.1	4	14.4	6	21.4
Transportation	255	251	204	81.3	47	18.7	0	0.0	0	0.0

\* Since these ministries did not split until the middle of the year, they did not report separately for 1999.

## **Municipal Corporations**

Municipal institutions have traditionally achieved a higher level of compliance with the 30-day standard than provincial institutions. This was the case once again in 1999, as municipal government organizations responded to 85% of requests within 30 days. Overall, 97% of municipal requests in 1999 were answered within 60 days.

For this year's report, we have taken a closer look at the performance of those municipal institutions that received the largest number of requests. The following three charts examine the municipal corporations that received the most requests. To provide a fair comparison, municipalities have been divided into three groups according to their population.

These charts support the view that municipalities are achieving a high level of success in meeting the legislated response standards. The figures for the larger municipalities are generally somewhat lower than for their smaller counterparts. However, of the 15 compliance rates listed, the lowest rate is still a very respectable 71% (City of Hamilton).

## **Police Services**

The five police services receiving the largest number of requests in 1999 generally show superior compliance results. Both the Durham Regional and Halton Regional Police Services exceeded 90% in responding within 30 days. The Toronto Police Service, with a very high volume of requests, responded to 82.2% within the time frame. Although the London Police Service met the 30-day standard for only 51% of its requests, all but one request was responded to within 60 days.

## **Hydro Electric Commissions**

Again, an examination of the five hydro electric commissions that received the most requests during 1999 demonstrates that municipal institutions continue to respond to access requests with a high level of compliance. The Welland Commission responded within 30 days to each of the 1,065 requests it received in 1999 — an excellent record.

## **Voluntary Compliance**

As noted in the 1998 Annual Report, privatization of government functions has removed entire categories of records from the scope of the provincial *Act*, one example being records held by the newly created Technical Standards & Safety Authority (the TSSA). Although not covered by the *Act*, the TSSA has developed a voluntary access code in an effort to provide the public with a level of accountability for its operations. The TSSA tracks request and disclosure activity and makes statistics available to the public.

**MUNICIPAL: NUMBER OF REQUESTS COMPLETED IN 1999**

**TOP FIVE MUNICIPAL CORPORATIONS (Population under 50,000), based on number of requests completed**

Municipalities	Requests	Requests	Within 1-30 days		Within 31-60 days		Within 61-90 days		More Than 90 days	
	Received in 1999	Completed in 1999	No. of Requests	%	No. of Requests	%	No. of Requests	%	No. of Requests	%
Township of Brighton (3,518)	265	265	265	100.0	0	0.0	0	0.0	0	0.0
Town of Caledon (39,837)	35	34	30	88.2	3	8.8	1	3.0	0	0.0
Township of Dorion (454)	21	21	21	100.0	0	0.0	0	0.0	0	0.0
Township of Georgina (32,652)	28	27	26	96.3	1	3.7	0	0.0	0	0.0
Township of Gravenhurst (10,030)	13	13	13	100.0	0	0.0	0	0.0	0	0.0

**TOP FIVE MUNICIPAL CORPORATIONS (Population between 50,000 and 200,000)**

Municipalities	Requests	Requests	Within 1-30 days		Within 31-60 days		Within 61-90 days		More Than 90 days	
	Received in 1999	Completed in 1999	No. of Requests	%	No. of Requests	%	No. of Requests	%	No. of Requests	%
County of Lambton (123,390)	120	120	120	100.0	0	0.0	0	0.0	0	0.0
Town of Oakville (134,300)	92	92	92	100.0	0	0.0	0	0.0	0	0.0
Town of Richmond Hill (116,000)	95	95	95	100.0	0	0.0	0	0.0	0	0.0
City of Sault Ste. Marie (80,054)	52	52	44	84.6	6	11.5	2	3.9	0	0.0
City of Thunder Bay (116,965)	99	98	82	83.7	14	14.3	2	2.0	0	0.0

**TOP FIVE MUNICIPAL CORPORATIONS (Population over 200,000)**

Municipalities	Requests	Requests	Within 1-30 days		Within 31-60 days		Within 61-90 days		More Than 90 days	
	Received in 1999	Completed in 1999	No. of Requests	%	No. of Requests	%	No. of Requests	%	No. of Requests	%
City of Hamilton (322,352)	42	38	27	71.0	5	13.2	6	15.8	0	0.0
Regional Municipality of Hamilton-Wentworth (461,541)	64	57	47	82.4	7	12.3	3	5.3	0	0.0
City of Mississauga (574,200)	226	228	186	81.6	41	18.0	1	0.4	0	0.0
City of Ottawa (330,228)	45	45	44	97.8	1	2.2	0	0.0	0	0.0
City of Toronto (2,385,421)	1872	1779	1410	79.3	294	16.5	50	2.8	25	1.4



**MUNICIPAL: NUMBER OF REQUESTS COMPLETED IN 1999**

**TOP FIVE MUNICIPAL CORPORATIONS (Population under 50,000), based on number of requests completed**

Municipalities	Requests	Requests	Within 1-30 days		Within 31-60 days		Within 61-90 days		More Than 90 days	
	Received in 1999	Completed in 1999	No. of Requests	%	No. of Requests	%	No. of Requests	%	No. of Requests	%
Township of Brighton (3,518)	265	265	265	100.0	0	0.0	0	0.0	0	0.0
Town of Caledon (39,837)	35	34	30	88.2	3	8.8	1	3.0	0	0.0
Township of Dorion (454)	21	21	21	100.0	0	0.0	0	0.0	0	0.0
Township of Georgina (32,652)	28	27	26	96.3	1	3.7	0	0.0	0	0.0
Township of Gravenhurst (10,030)	13	13	13	100.0	0	0.0	0	0.0	0	0.0

**TOP FIVE MUNICIPAL CORPORATIONS (Population between 50,000 and 200,000)**

Municipalities	Requests	Requests	Within 1-30 days		Within 31-60 days		Within 61-90 days		More Than 90 days	
	Received in 1999	Completed in 1999	No. of Requests	%	No. of Requests	%	No. of Requests	%	No. of Requests	%
County of Lambton (123,390)	120	120	120	100.0	0	0.0	0	0.0	0	0.0
Town of Oakville (134,300)	92	92	92	100.0	0	0.0	0	0.0	0	0.0
Town of Richmond Hill (116,000)	95	95	95	100.0	0	0.0	0	0.0	0	0.0
City of Sault Ste. Marie (80,054)	52	52	44	84.6	6	11.5	2	3.9	0	0.0
City of Thunder Bay (116,965)	99	98	82	83.7	14	14.3	2	2.0	0	0.0

**TOP FIVE MUNICIPAL CORPORATIONS (Population over 200,000)**

Municipalities	Requests	Requests	Within 1-30 days		Within 31-60 days		Within 61-90 days		More Than 90 days	
	Received in 1999	Completed in 1999	No. of Requests	%	No. of Requests	%	No. of Requests	%	No. of Requests	%
City of Hamilton (322,352)	42	38	27	71.0	5	13.2	6	15.8	0	0.0
Regional Municipality of Hamilton-Wentworth (461,541)	64	57	47	82.4	7	12.3	3	5.3	0	0.0
City of Mississauga (574,200)	226	228	186	81.6	41	18.0	1	0.4	0	0.0
City of Ottawa (330,228)	45	45	44	97.8	1	2.2	0	0.0	0	0.0
City of Toronto (2,385,421)	1872	1779	1410	79.3	294	16.5	50	2.8	25	1.4



**MUNICIPAL: NUMBER OF REQUESTS COMPLETED IN 1999**

**TOP FIVE POLICE INSTITUTIONS (based on number of requests completed)**

Institutions	Requests	Requests	Within 1-30 days		Within 31-60 days		Within 61-90 days		More Than 90 days	
	Received in 1999	Completed in 1999	No. of Requests	%	No. of Requests	%	No. of Requests	%	No. of Requests	%
Durham Regional Police Service	362	361	331	91.7	26	7.2	3	0.8	1	0.3
Halton Regional Police Service	403	372	366	98.4	5	1.3	1	0.3	0	0.0
London Police	277	259	132	51.0	126	48.6	1	0.4	0	0.0
Niagara Regional Police Service	407	408	258	63.2	139	34.1	7	1.7	4	1.0
Toronto Police Service	2147	2019	1659	82.2	277	13.7	73	3.6	10	0.5

**TOP FIVE HYDRO ELECTRIC COMMISSIONS**

Institutions	Requests	Requests	Within 1-30 days		Within 31-60 days		Within 61-90 days		More Than 90 days	
	Received in 1999	Completed in 1999	No. of Requests	%	No. of Requests	%	No. of Requests	%	No. of Requests	%
Cambridge & North Dumfries	24	24	24	100.0	0	0.0	0	0.0	0	0.0
Markham	11	11	11	100.0	0	0.0	0	0.0	0	0.0
Tecumseh	455	455	455	100.0	0	0.0	0	0.0	0	0.0
Toronto	22	26	20	77.0	5	19.2	1	3.8	0	0.0
Welland	1065	1065	1065	100.0	0	0.0	0	0.0	0	0.0

**MUNICIPAL: NUMBER OF REQUESTS COMPLETED IN 1999**

<b>TOP FIVE POLICE INSTITUTIONS (based on number of requests completed)</b>						
<b>Institutions</b>	<b>Requests</b>	<b>Requests</b>	<b>Within 1-30 days</b>	<b>Within 31-60 days</b>	<b>Within 61-90 days</b>	<b>More Than 90 days</b>
	<b>Received in 1999</b>	<b>Completed in 1999</b>	<b>No. of Requests</b>	<b>No. of Requests</b>	<b>No. of Requests</b>	<b>No. of Requests</b>
Durham Regional Police Service	362	361	331 91.3	26 7.2	3 0.8	1 0.3
Halton Regional Police Service	403	372	366 90.4	5 1.3	1 0.3	0 0.0
London Police	277	259	132 51.0	126 45.0	1 0.4	0 0.0
Niagara Regional Police Service	407	406	258 63.8	139 34.1	7 1.7	4 1.0
Toronto Police Service	2147	2019	1659 82.2	277 13.2	73 3.8	10 0.5

**TOP FIVE HYDRO ELECTRIC COMMISSIONS**

<b>Institutions</b>	<b>Requests</b>	<b>Requests</b>	<b>Within 1-30 days</b>	<b>Within 31-60 days</b>	<b>Within 61-90 days</b>	<b>More Than 90 days</b>
	<b>Received in 1999</b>	<b>Completed in 1999</b>	<b>No. of Requests</b>	<b>No. of Requests</b>	<b>No. of Requests</b>	<b>No. of Requests</b>
Cambridge & North Dumfries	24	24	24 100.0	0 0.0	0 0.0	0 0.0
Markham	11	11	11 100.0	0 0.0	0 0.0	0 0.0
Tecumseh	455	455	455 100.0	0 0.0	0 0.0	0 0.0
Toronto	22	26	20 77.8	5 19.2	1 3.8	0 0.0
Welland	1063	1063	1063 100.0	0 0.0	0 0.0	0 0.0

# Appeals by the Public

The right to appeal a government organization's decision to an independent body is one of the foundations of access and privacy legislation in Ontario. Anyone who has made a request under the Acts to a provincial or municipal government organization and who is not satisfied with the response can appeal the decision to the IPC. Appeals can be filed concerning a refusal to provide access to general records or personal information, a refusal to correct personal information, the amount of fees charged, or other procedural aspects relating to a request.

When an appeal is received, the IPC first attempts to settle the appeal informally. If all the issues in an appeal are not resolved within a reasonable period of time, the IPC may conduct an inquiry and issue a binding order, which could include ordering the government organization to release all or part of the information sought.

## Continuous Improvement

In 1999, the IPC's Tribunal Services Department implemented the second phase of changes to the three stages of the appeals process – intake, mediation and adjudication.

The appeals process improved significantly and measurably during 1999, at least in part as a result of the introduction of the new process changes. At the end of 1997, we were troubled by the fact that 51% of appeals closed that year required an order, meaning that mediation and other informal dispute resolution techniques were successful in only 49% of our cases. By 1998, we had succeeded in improving our settlement rate from 49% to 58%, and in 1999 this figure grew to 74%.

During the year, 706 appeals were completed, all but two of them under the new system.

## Statistical Overview - Appeals Opened

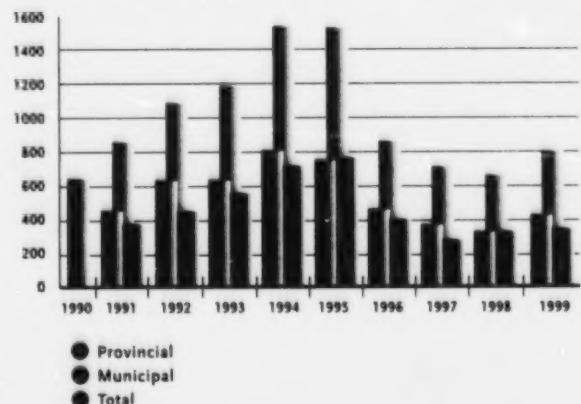
Overall, 806 appeals were made to the IPC in 1999 – up 20% from the previous year. The number of provincial appeals exceeded the number of municipal appeals by 32%. By comparison, the number of municipal and provincial appeals was virtually identical in 1998.

Provincial appeals were up 37% from 1998. Seventy-eight per cent of provincial appeals involved ministries rather than agencies. This proportion is similar to that of previous years.

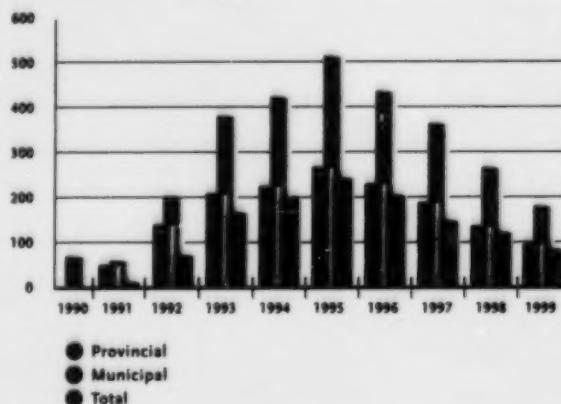
The Ministry of the Solicitor General and Correctional Services was involved in the largest number of appeals (107). The Attorney General had the next highest number of appeals (47), followed by Health and Long-Term Care (42), Community and Social Services (29), and Environment (27). The agencies with the highest number of appeals included Ontario Hydro (34), Workplace Safety and Insurance Board (9), Ontario Human Rights Commission (8), and the Public Guardian and Trustee (8).

Municipal appeals were up three per cent in 1999. The largest proportion – 48% – concerned the police, followed by municipal corporations, and then boards of education. These proportions are similar to those in 1998.

APPEALS RECEIVED – 1990-1999



#### ORDERS ISSUED - 1990-1999



Almost half of the appeals involved a request for general records, while slightly more than one-third involved a request for personal information. An additional one per cent involved a request for both general records and personal information, down from about 30% in 1998 as a result of an adjustment to the manner in which appeals are categorized. Starting in 1999, if any of the records in an appeal contained the personal information of the requester, the appeal was characterized as a personal information appeal. Conversely, if none of the records involved in an appeal contained the personal information of the requester, the appeal was characterized as a general records appeal. Also, for the first time, deemed refusals to provide access to information were tracked separately from other types of appeals and accounted for about eight per cent of appeals. As in previous years, there were few appeals in other categories such as fee estimates and objections by third parties to the disclosure of information.

The majority of appellants - 68% - were individual members of the public. The next highest proportion of appellants were from the business community,

followed by the media, and associations/groups. Since appellants have not been categorized in this manner since 1994, there are no comparative figures for 1998.

#### Appeals Closed

The IPC closed 706 appeals during 1999 - an increase of 10% from 1998. As in previous years, slightly more than half (369) of the appeals resolved concerned provincial government organizations. Forty-seven per cent (334) concerned municipal institutions. Municipal appeals closed were up nine per cent, while provincial appeals closed were up 11% in comparison to 1998 levels. Three non-jurisdictional appeals were also closed in 1999.

Nearly three-quarters of all appeals (74%) were closed by means other than an order. Of these, five per cent were screened out, 58% were successfully mediated, 30% were withdrawn, and six per cent abandoned. An additional one per cent of appeals were dismissed without an inquiry.

Of the appeals closed during the intake stage, 76% were withdrawn, 17% screened out, and seven per cent abandoned. Of the appeals closed during the mediation stage, 88% were successfully mediated, five per cent withdrawn, four per cent abandoned, and three per cent were closed by issuing an order. Of the appeals that were closed during the adjudication stage, 90 per cent were closed by issuing a formal order, four per cent were withdrawn, three per cent were successfully mediated, three per cent were dismissed without an inquiry, and two per cent were abandoned.

The IPC issued 186 final orders during 1999 - a 28% decrease from the previous year. The IPC also issued three interim orders and four reconsideration

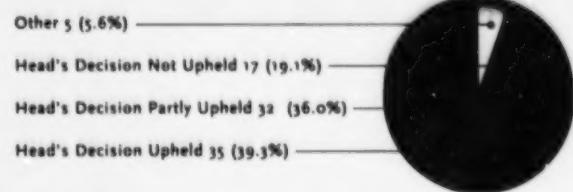
orders. The overall number of appeals closed by order during 1999 was down 32%, and the relative proportion of appeals closed by order was down 16% from 1998.

In appeals resolved by order, the decision of the head of the government organization was upheld in 37% and partly upheld in 42% of the cases. The head's decision was not upheld in 14% of the appeals. The proportion of decisions that were fully upheld has continued to decline over the past two years, from about 48% in 1998 and about 58% in 1997.

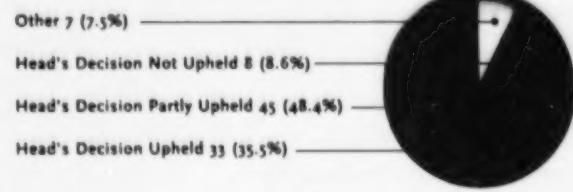
#### IPC APPEALS APPLICATION FEES COLLECTED - 1999

General Records	\$8,300
Personal Information	\$2,125

#### OUTCOME OF APPEALS CLOSED BY ORDER MUNICIPAL - 1999



#### OUTCOME OF APPEALS CLOSED BY ORDER PROVINCIAL - 1999



#### OUTCOME OF APPEALS CLOSED, BY REASON AND BY STAGE- 1999

	Intake	%	Mod.	%	Adj.	%	Total	%
Screened Out	29	10.1	0	0	0	0	29	4.1
Successfully Mediated	0	0	298	88.4	5	1.5	303	44.9
Withdrawn	134	76.1	17	5.6	7	3.6	158	22.4
Abandoned	13	7.4	13	3.9	3	1.6	29	4.1
No Inquiry	0	0	0	0	5	3.8	5	0.7
Ordered	0	0	9	2.7	173	89.6	182	25.8
Total	176	100.0	357	100.0	193	100.0	706	100.0

#### APPEALS RECEIVED BY TYPE OF APPELLANT - 1999

	Provincial	%	Municipal	%	Total	%
Academic/ Researcher	4	0.9	0	0	4	0.5
Business	129	28.2	61	18.8	194	24.2
Government	2	0.3	1	0.3	3	0.3
Individual	220	51.3	205	76.9	546	66.6
Media	22	4.8	1	1.0	23	2.8
Association/Group	14	3.1	9	3.2	23	2.8
Total	452	100.0	345	100.0	803*	100.0

\* Three additional non-jurisdictional appeals were received in 1999.



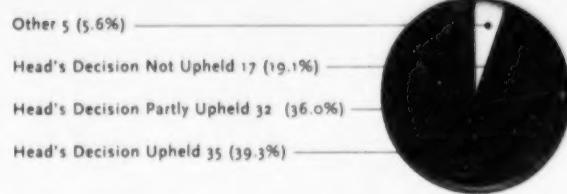
orders. The overall number of appeals closed by order during 1999 was down 32%, and the relative proportion of appeals closed by order was down 16% from 1998.

In appeals resolved by order, the decision of the head of the government organization was upheld in 37% and partly upheld in 42% of the cases. The head's decision was not upheld in 14% of the appeals. The proportion of decisions that were fully upheld has continued to decline over the past two years, from about 48% in 1998 and about 58% in 1997.

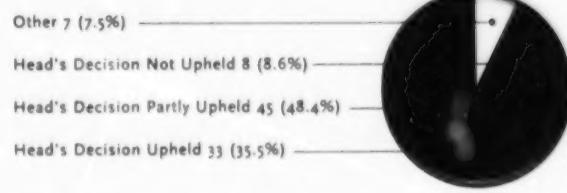
#### IPC APPEALS APPLICATION FEES COLLECTED - 1999

General Records	\$9,204
Personal Information	\$2,125

#### OUTCOME OF APPEALS CLOSED BY ORDER MUNICIPAL - 1999



#### OUTCOME OF APPEALS CLOSED BY ORDER PROVINCIAL - 1999



#### OUTCOME OF APPEALS CLOSED, BY REASON AND BY STAGE- 1999

	Intake	%	Med.	%	Adj.	%	Total	%
Screened Out	29	16.5	0	0	0	0	29	4.1
Successfully Mediated	0	0	298	88.4	5	2.6	303	42.9
Withdrawn	134	76.1	17	5.0	7	3.6	158	22.4
Abandoned	13	7.4	13	3.9	3	1.6	29	4.1
No Inquiry	0	0	0	0	5	2.6	5	0.7
Ordered	0	0	9	2.7	173	89.6	182	25.8
Total	176	100.0	337	100.0	193	100.0	706	100.0

#### APPEALS RECEIVED BY TYPE OF APPELLANT - 1999

	Provincial	%	Municipal	%	Total	%
Academic/ Researcher	4	0.9	0	0	4	0.5
Business	129	28.2	65	18.8	194	24.1
Government	8	1.7	1	0.3	9	1.1
Individual	280	61.3	266	76.9	546	68.0
Media	22	4.8	5	1.4	27	3.4
Association/Group	14	3.1	9	2.6	23	2.9
Total	457	100.0	346	100.0	803*	100.0

\* Three additional non-jurisdictional appeals were received in 1999.

# Judicial Reviews

In our 1998 Annual Report, we discussed a key 1998 decision by the Ontario Court of Appeal, which sent out an important message about the deferential treatment which it expects lower courts to show when reviewing IPC decisions dealing with the exemptions from disclosure.

This message was reinforced in two 1999 decisions of the Ontario Court of Appeal, and in a decision of the Supreme Court of Canada released early in 2000 just as this report was being prepared.

Until 1998, the appropriate standard of review for the Commissioner's decisions had remained uncertain. In a Workers' Compensation Board case<sup>1</sup>, the Ontario Court of Appeal concluded that the Commissioner's interpretation and application of exemptions from the right of access should be given considerable deference in light of the Commissioner's specialized expertise in balancing access and privacy considerations, as well as in fact-finding and weighing submissions. So long as the Commissioner's decisions are not "unreasonable," the court should refrain from interfering and substituting its own interpretation and application of the legislation, simply because it might have reached another conclusion.

In 1999, in Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)<sup>2</sup>, the Court of Appeal extended the judicial deference

**The override clause provides that an exemption from the right of access under the Act does not apply "where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption."**

principle to the Commissioner's interpretation and application of the "public interest override" at section 23 of the provincial statute. The override clause provides that an exemption from the right of access under the Act does not apply "where a compelling public

## OUTSTANDING JUDICIAL REVIEWS AS OF DECEMBER 31, 1999: 24

Launched by:

Requesters 3

Affected parties 2

Institutions 19



New applications received in 1999: 16

## JUDICIAL REVIEWS CLOSED IN 1999: 16

Of these:

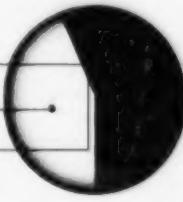
Abandoned (IPC order stands) 8

IPC order upheld 7\*

IPC order not upheld 1\*\*

\* Orders upheld: M-913 and M-938 (one judicial review application); M-917; M-931; M-936; M-1033; P-1415 and P-912

\*\* P-1510



interest in the disclosure of the record clearly outweighs the purpose of the exemption."

In this case, a media outlet had asked the Ministry of Finance to disclose its economic impact studies for Ontario dealing with the consequences of Quebec separation from Canada or victory in a "Yes" vote on separation during the 1995 referendum. The Ministry refused to release this material, claiming that the records were exempt because they constituted advice or recommendations to government, disclosure would harm intergovernmental relations with Quebec and Canada, and disclosure would interfere with Ontario's economic interests, including the government's ability to manage the economy.

The Commissioner found that there was a "compelling public interest" in disclosure of the records given the longstanding prominence of Quebec separation in Canadian political debate, despite the fact that the records qualify for exemption under the Act.

However, the Commissioner also found that this public interest outweighed the purpose of the exemptions only for those records or portions of records which did not disclose Ontario's negotiating strategies or details regarding affected sectors of the Ontario economy. The Commissioner ordered these less sensitive documents disclosed and protected the confidentiality of information on Ontario's strategies and vulnerable sectors.

The Ontario Court of Appeal upheld the Commissioner's decision. The Court found that the interpretation and application of the public interest override are within the Commissioner's expertise and must be accorded deference on a standard of reasonableness. These reasons also speak to the "importance of citizen participation in setting government policy" and state that "one would be hard-pressed to come up with a subject of greater public interest."

The Supreme Court of Canada recently denied the government's application for leave to appeal the Ontario Court of Appeal judgment. As a result, it is now a firmly enshrined principle in Ontario that the Commissioner's reasonable decisions on access to records should be free from judicial interference and must receive appropriate deference from the Courts.

This does not mean that the Commissioner's rulings are completely free from the court's oversight. Late in 1999, the Court of Appeal upheld a lower court decision setting aside an adjudicator's ruling on the threat to personal safety exemptions.<sup>1</sup> While the Court of Appeal again affirmed that the Commissioner's rulings are entitled to deference, the court cautioned that even deference does not protect a ruling which sets too high a standard of proof or fails to give adequate reasons for rejecting the government's evidence. (Of the 16 judicial reviews closed in 1999, this was the only case in which an IPC ruling was overturned.)

Finally, due in part to the Court of Appeal's decisions, the Divisional Court has continued to extend deference to the Commissioner's rulings on questions of procedure, fairness and confidentiality in the appeal

and inquiry process<sup>4</sup>, and has upheld the Commissioner's access rulings on the "reasonableness" standard even where it would have agreed with the outcome in any event.<sup>1</sup> The Commissioner is confident that acceptance of judicial deference will reduce the number of legal challenges to access rulings and ultimately promote a greater measure of routine disclosure of non-exempt information.

<sup>1</sup> *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)*, [1998] O.J. No. 3485, 164 D.L.R. (4th) 129, 112 O.A.C. 121, 41 O.R. (3d) 464.

<sup>2</sup> *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] 118 O.A.C. 108 (C.A.), leave to appeal refused (January 20, 2000), Doc. 27191 (S.C.C.)

<sup>3</sup> *Ontario (Minister of Labour) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 4560 (C.A.), affirming (June 3, 1998), Toronto Doc. 28/98 (Ont. Div. Ct.)

<sup>4</sup> *Ontario (Solicitor General and Minister of Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [June 3, 1999], Toronto Doc. 103/98 (Ont. Div. Ct.)

<sup>5</sup> *Duncanson v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 2464, 175 D.L.R. (4th) 340 (Ont. Div. Ct.)

# Privacy Investigations

The provincial and municipal Acts establish rules to help protect personal privacy. The rules govern the collection, retention, use, disclosure, security, and disposal of personal information held by government organizations.

Anyone who believes that a provincial or municipal government organization has failed to comply with one of the Acts – and that his or her privacy has been compromised as a result – may complain to the Information and Privacy Commissioner. The IPC will look into the complaint. In many cases, we attempt to mediate a solution. The IPC may make formal recommendations to a government organization to amend its practices.

To help ensure adherence to the legislation, the IPC also conducts compliance reviews of selected organizations' information management practices. In addition, the IPC comments on the privacy aspects of any computer-matching proposals made by government organizations.

## Probing Complaints

The IPC received 94 privacy complaints and completed 88 investigations in 1999. Four formal investigation reports were issued, resulting in four recommendations to government organizations.

In looking into complaints, the IPC continues to emphasize informal resolution. Consistent with this approach, the majority of complaints, 95%, were closed without the issuance of a formal report. Roughly three per cent of complaints were screened out during intake. Approximately 49% were successfully mediated. Another 25% were closed informally by way of a letter. An additional 18% were withdrawn or abandoned.

Of the completed investigations, 18% were closed at the Intake stage. Of these, 81% were withdrawn, the rest being screened out either because the matter was not within our jurisdiction or the matter had been decided before.

If privacy complaints move beyond the Intake stage, they are streamed to Mediation. Eighty-two per cent of all privacy complaint investigations completed in 1999 were closed at the Mediation stage. Of these, approximately 60% were successfully mediated, 31% were closed informally by letter, six per cent through the issuing of a formal report, while three per cent were withdrawn and one per cent abandoned.

The 88 investigations completed in 1999 involved 111 issues. The disclosure of personal information, raised in 81% of complaints, was the most frequent issue raised. The collection of personal information was an issue in 26% of cases, while the security of personal information was an issue in slightly less than five per cent of complaints.

In 35% of the issues raised, the privacy investigations revealed that institutions had complied with the Acts. In 18% of the issues, institutions were found to not to have complied with the Acts – and to have partially complied with the Acts in another three per cent. In two per cent of the issues, it was concluded that the information in question was not personal information. In another 25%, the Acts did not apply.

As in previous years, the general public was the principle user of the complaints system. Of the 88 cases completed in 1999, 95% were complaints that had been filed by the general public. Three per cent of the complaints were filed by members of the business community.

#### ISSUES IN PRIVACY INVESTIGATIONS

##### PROVINCIAL - 1999

Security - 1 (2.3%)  
General Privacy - 1 (2.3%)  
Accuracy - 1 (2.3%)  
Use - 1 (2.3%)  
Collection - 7 (16.3%)  
Disclosure - 32 (74.5%)



#### ISSUES IN PRIVACY INVESTIGATIONS

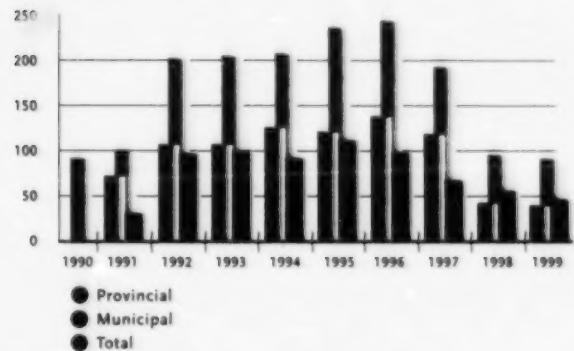
##### MUNICIPAL - 1999

Security - 3 (4.4%)  
Manner of Collection - 2 (2.9%)  
Retention - 2 (2.9%)  
General Privacy - 2 (2.9%)  
Use - 2 (2.9%)  
Notice of Collection - 2 (2.9%)  
Collection - 16 (23.6%)  
Disclosure - 39 (57.5%)



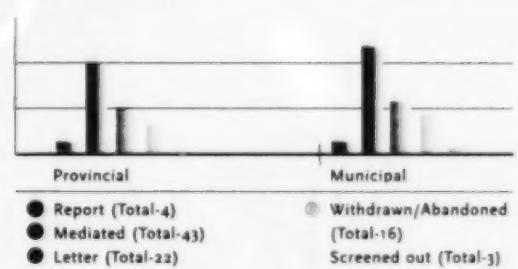
#### NUMBER OF PRIVACY INVESTIGATIONS COMPLETED

##### 1990-1999



#### PRIVACY INVESTIGATIONS COMPLETED

##### BY TYPE OF RESOLUTION



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**SUMMARY OF PRIVACY INVESTIGATIONS - 1999**

	1998 Privacy Complaints		1998 Total	1999 Privacy Complaints		1999 Total
	(Provincial)	(Municipal)		(Provincial)	(Municipal)	
Carried Forward	8	10	18	11	14	25
Initiated	46	58	104	46	48	94
Completed	43	54	97	40	48	88
In Process	11	14	25	17	14	31

**OUTCOME OF PRIVACY ISSUES INVESTIGATED - 1999**

	Provincial Investigations	Municipal Investigations	1999 Total
Did not comply with the Act	1	19	20
Complied with the Act	18	21	39
Partially complied	1	2	3
Not personal information	0	2	2
Act does not apply	15	13	28
Unable to conclude	8	11	19
Total	43	68	111 <sup>a</sup>

<sup>a</sup> There are more issues than investigations, since an investigation may involve more than one issue.

**PRIVACY INVESTIGATIONS BY TYPE OF RESOLUTION & STAGE CLOSED - 1999**

	Intake	Mediation	1999 Total
Screened out	3	0	3
Mediated	0	43	43
Letter	0	22	22
Report	0	4	4
Withdrawn	13	2	15
Abandoned	0	1	1
Total	16	72	88

**SUMMARY OF PRIVACY INVESTIGATIONS - 1999**

	1998 Privacy Complaints (Provincial) (Municipal)		1998 Total	1999 Privacy Complaints (Provincial) (Municipal)		1999 Total
Carried Forward	8	16	18	11	14	25
Initiated	46	52	104	46	48	94
Completed	43	58	97	40	48	88
In Process	11	18	25	17	14	31

**OUTCOME OF PRIVACY ISSUES INVESTIGATED - 1999**

	Provincial Investigations	Municipal Investigations	1999 Total
Did not comply with the Act	1	15	20
Complied with the Act	18	31	39
Partially complied	1	1	3
Not personal information	0	1	2
Act does not apply	15	13	28
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Total	43	68	111*

\* There are more issues than investigations, since an investigation may involve more than one issue.

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Mediated	0	43	43
Letter	0	22	22
Report	0	4	4
Withdrawn	13	0	13
Abandoned	0	1	1
Total	16	78	88

## Outreach program

The IPC continued to expand its outreach program in 1999 with the launch of a key new program, *Reaching Out to Ontario*, and the rollout of the first part of its new school program, including the release of a Grade 5 teachers' guide.

Under the *Reaching Out to Ontario* program, teams from the IPC visit different regions of Ontario for a series of public meetings, media interviews, and special presentations to business, university and public interest groups. The program was launched in November 1999, when Commissioner Ann Cavoukian and Assistant Commissioner Tom Mitchinson led a nine-person IPC team to southwestern Ontario for the first of these educational initiatives. Public meetings were held at the central branch of the London Library and at the St. Thomas Library, and presentations were also made to: the London Chamber of Commerce; faculty and students at the University of Western Ontario; Freedom of Information and Privacy co-ordinators from southwestern Ontario municipalities and police forces; and a workplace privacy conference in Chatham.

Also late in 1999, the IPC completed the development of the core areas of its school program, which was created to help provide Ontario students with information on the important public values of open government and personal privacy. The program is aimed at Grade 5 and 10 students, as these are the grades when the concepts of government and civics are introduced in the classroom. During 1999, the focus was on Grade 5, with the release of the teachers' guide, *What Students Need to Know About Freedom of Information and Protection of Privacy*, during the early fall. Within the first two weeks after announcing that the guide was available, the IPC received requests from schools and school boards for more than 300 copies.

The IPC also has a companion Grade 5 program, *Ask An Expert*, where a speaker from the IPC's Tribunal Services Department visits a school to help launch the

*What Students Need to Know About Freedom of Information and Protection of Privacy* program by conducting the first activity. The feedback from both students and teachers has been extremely positive.

The IPC has also developed a teachers' guide for Grade 10, as well as an *Ask an Expert* program tailored to the needs and interests of older students. These programs are being launched in the fall of 2000, in conjunction with the new Civics curriculum, which is part of the Grade 10 history program.

With the development of the school program, the IPC's corporate outreach program has five key components.

- the public speaking program (of which *Reaching Out to Ontario* is a key part);
- the media relations program;
- the publications program (print and electronic);
- the schools program;
- the IPC's Web site.

### Public Speaking

Commissioner Cavoukian was a keynote speaker at a number of major conferences in 1999. Among these was a joint conference of the Association of Municipal Clerks and Treasurers of Ontario and the International Institute of Municipal Clerks; the Canadian Centre for Ethics & Corporate Policy's spring luncheon series; Centrum Information's conference on *The New Canadian Privacy Law*; the annual Investment Funds Institute of Canada conference; Insight Information's *Information Privacy and E-Commerce* conference; the

Canadian Commissioners' 1999 Summit; the 1999 International Data Commissioners' Conference; the *E-smartcards 99* conference; and Management Board's annual Access and Privacy Conference. Other major presentations included one to an executive breakfast on privacy, which was organized by NCR Canada.

Other aspects of the IPC's public speaking program include:

- a media information program, under which IPC staff speak to newsrooms and journalism classes;
- a university and college speakers program, where IPC staff address legal, business, and technology classes at Ontario universities and colleges;
- a general public speaking program, under which IPC staff speak to groups or organizations that have ranged from archivists to credit unions.

### **Media Relations**

Media reports are one of the ways that Ontario residents learn about access and privacy issues. The IPC has both a pro-active and reactive media relations program. The Commissioner is the official spokesperson for the IPC and accepts as many media requests for interviews as her schedule allows. The IPC also actively approaches the media for coverage when major IPC policy papers are released. During 1999, the Commissioner gave 75 media interviews – to national newspaper, magazine, TV, and radio reporters; Ontario media; international media; and online media.

### **IPC Publications**

The IPC released 19 publications in 1999, on issues ranging from identity theft to how to protect your child's privacy online, and from e-mail encryption to biometrics to the role of Freedom of Information and Privacy Co-ordinators. (See the following pages for more information.)

### **School Program**

The IPC guide for Grade 5 Social Studies teachers, *What Students Need to Know About Freedom of Information and Protection of Privacy*, and a brief brochure that provides information about the program, are available on the IPC's Web site. A guide for Grade 10 Civics teachers will be posted to the Web site during the fall of 2000, along with a similar brochure.

### **IPC Web Site**

This site is another cornerstone of the outreach program. All IPC publications and orders, plus copies of the legislation the IPC operates under, press releases, selected speeches, educational material, common questions and answers, and other information is readily available on our Web site, [www.ipc.on.ca](http://www.ipc.on.ca). (For information about some of the new sections added to the Web site in 1999, see the page following the publications pages.)

## Publications

The IPC has an extensive publishing program aimed at fostering increased awareness and understanding of various access- and privacy-related issues and topics.

This publishing program, in addition to the annual report, includes *IPC Perspectives* (a twice-a-year newsletter), policy papers (which take an in-depth look at major access or privacy issues), the *If you wanted to know...* series (which spotlights topical issues, many of them related to the Internet), *Practices* (or best practices), which are written primarily for government organizations, and other special publications, including guides for teachers.

### Papers published in 1999 included:

- *Intelligent Software Agents: Turning a Privacy Threat into a Privacy Protector.* A joint project of the Office of the Information and Privacy Commissioner/Ontario and the Registratierkamer, The Netherlands, this paper discusses intelligent software agents, their potential problems, and ways of using them to protect privacy.
- *E-mail Encryption Made Simple.* The paper discusses e-mail encryption technology — what it is, how it works, and the different options available.
- *Best Practices for Protecting Individual Privacy in Conducting Survey Research.* This publication was produced in anticipation of increased survey research by government organizations. All three versions (full, condensed, and summary) address best practices for how a government organization should handle survey research, from the initial issue definition stage to final disposal of personal information.

- *Biometrics and Policing: Comments from a Privacy Perspective.* This is a chapter, contributed by Commissioner Cavoukian, to the book, *Polizei und Datenschutz - Neupositionierung im Zeichen der Informationsgesellschaft*, a compilation of essays by international privacy and data protection experts. The book was published in Germany but the article by the Commissioner is available on the IPC's Web site.
- *Consumer Biometric Applications: A Discussion Paper.* This is a detailed review of various biometrics, technologies that use them, how these technologies work, and general issues associated with them. With a view to application in the private sector, the paper also discusses the relevant privacy concerns.
- *Backgrounder for Senior Managers on the Role of Freedom of Information and Privacy Co-ordinators relating to Access to Information.* This backgrounder looks at the crucial role played by the co-ordinators in assisting government institutions in meeting their statutory obligations under freedom of information legislation, in promoting open government, and in fostering an organizational culture that advances the fundamental access principles of the legislation.

- **Privacy and Biometrics.** The paper examines the privacy implications of using biometric technologies and includes a call to action to the data protection community to ensure that these technologies are used in a way that conforms to the expectations of a privacy-minded society.
- **What Students Need to Know About Freedom of Information and Protection of Privacy.** This guide for Grade 5 teachers, part of the IPC's new school program, was created by the IPC's Tribunal Services Department with the assistance of classroom teachers and curriculum specialists. The guide includes teachers' notes, an introduction that provides students with an overview of the subject matter, classroom activities, and resources for lesson planning. This material complements Ontario's Grade 5 Social Studies unit on Government in Canada.
- **Privacy as a Fundamental Human Right vs. an Economic Right: An Attempt at Conciliation.** This publication reviews the traditional approaches to the topic and examines the tension between legislation and self-regulation in addressing the issue. Also discussed are information intermediaries and the concept of a structured market for personal data.

Other 1999 publications included the IPC's 1998 annual report, spring and fall editions of *Perspectives*, and a new IPC *Practice* on the IPC's revised process for submitting and sharing of representations in an inquiry. The IPC also updated and released two of its core brochures: *Access to Information under Ontario's Information and Privacy Acts*, and *The Appeal Process and Ontario's Information and Privacy Commissioner*.

And the IPC released three more reports in its *If you wanted to know...* series, including:

- **Why Web sites need Privacy Policies.** The paper, after citing the public's concern over online privacy and the need for Web sites to adopt and prominently post privacy policies, discusses best practices to address these privacy concerns. Excerpts of actual privacy policies are included.
- **Identity Theft and Your Credit Report: What You Should Do to Protect Yourself.** This publication provides guidelines on what to do about your credit report if your identity/identification has been stolen.
- **How to protect your child's privacy online.** This paper encourages parents to teach their children to be "Net smart," and offers tips on how to accomplish this.

#### ALSO AVAILABLE

All of these 1999 reports and earlier IPC papers are available on the IPC Web site ([www.ipc.on.ca](http://www.ipc.on.ca)). Or, you can call the Communications Department at 416-326-3333 or 1-800-387-0073 and ask to have the reports you are interested in mailed or e-mailed to you.

Among the most popular of the earlier IPC reports (based on the number of hits they receive on the Web site) are: *Identity Theft: Who's Using Your Name?* (1997); *Smart, Optical and Other Advanced Cards: How to Do a Privacy Assessment* (1997); and *Data Mining: Staking a Claim on Your Privacy* (1998).

If you would like to receive our IPC publications on a regular basis via e-mail, just ask to be placed on our electronic mailing list by sending an e-mail to [publicat@ipc.on.ca](mailto:publicat@ipc.on.ca) with your name, address, phone number, and the e-mail address to which you want the publications sent.

## IPC Web site

One of the key tenets in the IPC's mandate is to help to educate the public about Ontario's access and privacy laws and policy issues.

Our Web site ([www.ipc.on.ca](http://www.ipc.on.ca)) is one of the key communication tools the IPC uses to help meet this mandate. On this site, you will find: IPC policy papers and other publications; orders, reconsiderations and investigations; press releases; selected speeches and presentations; plain language mini-guides to the provincial and municipal Acts; plus copies of the two Acts; answers to frequently asked questions about access and privacy, and much more.

The IPC continues to streamline its popular Web site, with more changes planned for 2000, including major design changes.

Among the changes implemented in 1999 were:

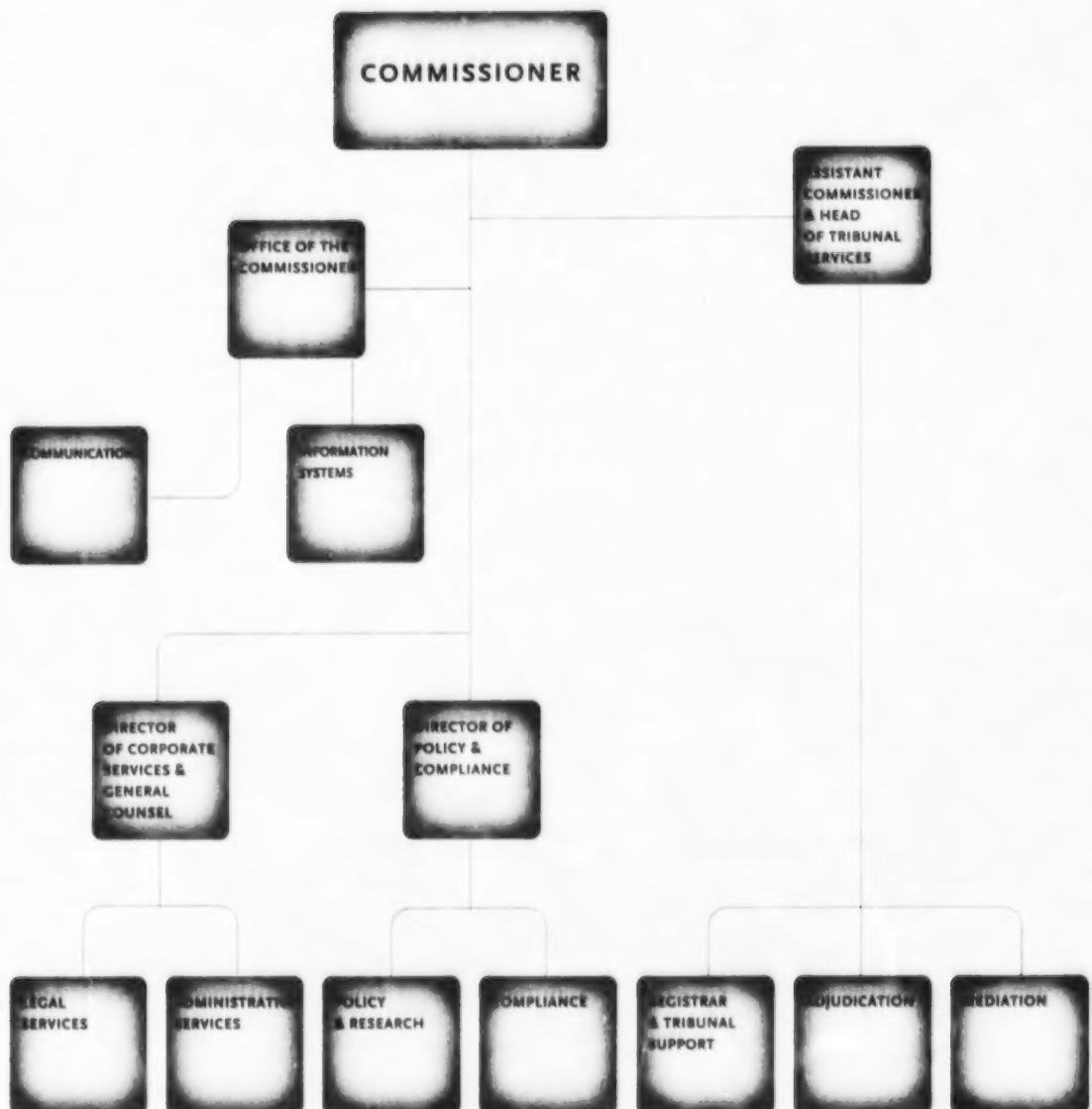
- The creation of an **Educational Resources** page. This page includes material from the IPC's new school program, including a guide for Grade 5 teachers, *What Students Need to Know about Freedom of Information and Protection of Privacy*. The page also includes the IPC paper, *A Guide to Ontario Legislation covering the release of Students' Personal Information*, and a link to information on the Ministry of Education's Web site about the new Grade 10 Civics program (being launched for the 2000-2001 school year), which includes elements on freedom of information and protection of privacy.

- The addition of a **Speeches and Presentations** page. Selected speeches or presentations by the Commissioner and IPC staff are posted to this page. Among these are: *Critical Questions – The Right Answers*, a speech by Commissioner Ann Cavoukian to the 1999 Access and Privacy Conference organized by Management Board

Secretariat; *Government Accountability and the Public Interest under the Freedom of Information and Protection of Privacy Act*, a speech by senior legal counsel Mary O'Donoghue to the University of Western Ontario's Faculty of Law Speakers Program; and *Opening the Window to Government: Public Access to Government Information and the Role of the IPC*, a speech by Commissioner Cavoukian to a joint conference of the International Institute of Municipal Clerks and the Association of Municipal Managers, Clerks, and Treasurers of Ontario.

A number of other pages on the Web site have been re-designed, including the **What's New** page, and additional information about the IPC itself has been added, including the IPC's *Business Plan for 1999-2003* (posted to the **Our Role** page).

# Organizational Chart



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# Financial statement

	1999-2000 ESTIMATES	1998-99 ACTUAL	1998-99 ESTIMATES
Salaries & Wages	\$4,381,700	\$3,742,553	\$4,532,100
Employee Benefits	\$833,500	\$783,623	\$861,100
Transportation and Communication	\$147,800	\$116,900	\$141,400
Services	\$876,400	\$686,737	\$823,800
Supplies and equipment	\$271,800	\$233,413	\$151,800
<b>Total Expenditures</b>	<b>\$6,510,800</b>	<b>\$5,987,393</b>	<b>\$6,510,800</b>

Note: The IPC's fiscal year begins April 1 and ends March 31. The financial administration of the IPC is audited on an annual basis by the Provincial Auditor.

## Appendix 1

As required by the *Public Sector Salary Disclosure Act, 1996*, the following chart shows which IPC employees received more than \$100,000 in salary and benefits during 1999.

NAME	POSITION	SALARY PAID	TAXABLE BENEFITS
Cavoukian, Ann	Commissioner	\$141,815.61	\$401.95
Mitchinson, Tom	Assistant Commissioner	\$125,273.87	\$355.41
Anderson, Ken	Director of Corporate Services & General Counsel	\$121,261.67	\$344.16
Challis, William	Legal Counsel	\$112,190.67	\$318.66



# Financial statement

	1999-2000 ESTIMATES	1998-99 ACTUAL	1998-99 ESTIMATES
Salaries & Wages	\$4,381,700	\$3,742,553	\$4,532,100
Employee Benefits	\$832,500	\$785,622	\$861,100
Transportation and Communication	\$147,800	\$116,980	\$141,400
Services	\$876,400	\$686,797	\$823,800
Supplies and equipment	\$271,800	\$235,438	\$151,800
<b>Total Expenditures</b>	<b>\$6,510,200</b>	<b>\$5,567,390</b>	<b>\$6,510,200</b>

Note: The IPC's fiscal year begins April 1 and ends March 31. The financial administration of the IPC is audited on an annual basis by the Provincial Auditor.

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Anderson, Ken	Director of Corporate Services & General Counsel	\$121,261.69	\$344.16
Challis, William	Legal Counsel	\$112,190.67	\$318.66